Supreme Court, U.S.
FILED

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No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

CHI-MING CHOW,

Petitioner,

v.

VAN BUREN TOWNSHIP, K-MART CORPORATION and JILL FEHRENBACH,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this case should be summarily reversed because of clear error by the Courts below which deprived Petitioner of his due process right to a trial of his claim by making an impossible condition precedent?

2. Whether the decision of the Michigan Courts below violated the Equal Protection Clause of the Fourteenth Amendment by eliminating the right to trial of those victims of malicious prosecution who are unjustly convicted by means of fraud or perjury?

3. Whether the decision of the Michigan Courts below violates the Due Process Clause of the Fourteenth Amendment by barring a hearing on Petitioner's claims?

LIST OF PARTIES

Petitioner:	Chi-Ming Chow, an individual citizen
Respondents:	
Van Buren Township:	a local governmental body in southeastern Michigan; this party was dismissed from the suit in Wayne County Circuit Court, but is named in the caption in the Michigan Court of Appeals and Michigan Supreme Court
K-Mart Corporation:	a private corporation headquartered in Troy, Michigan. There are no parent companies; its corporate legal department has been requested to provide its non-wholly-owned subsidiaries, if any, to its appellate counsel
Jill Fehrenbach:	an individual citizen employed by K-Mart at the time this cause of action arose.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Chi-Ming Chow respectfully requests that this Court issue a Writ of Certiorari to review the Order of the Michigan Supreme Court entered on July 25, 1998, which left in place the Memorandum Order of the Michigan Court of Appeals entered on July 8, 1997.

CITATIONS BELOW

There are no published opinions:

1. This case has Michigan Supreme Court Docket No. 110961, and Michigan Court of Appeals Docket No. 191046, and Wayne County Circuit Court Case No. 94-422-740 NZ.

2. A related case is Chi-Ming Chow v. State of Michigan et al, for which a writ is also sought; that case has Case No. 97-1612 in the U.S. Court of Appeals, Sixth Circuit, and 96-CV-74187 for the U.S. District Court for the Eastern District of Michigan, Southern Division.

BASIS OF JURISDICTION

The Order denying leave to appeal by the Michigan Supreme Court was entered July 28, 1998 (App at 1a) which left in place the Memorandum Order of the Michigan Court of Appeals entered on July 8, 1997 (App at 3a). A timely Motion for Reconsideration was filed and was denied by the Michigan Supreme Court on September 28, 1998 (App at 21a). Pursuant to Supreme Court Rules 13.1 and 13.3 and 30.1, this Petition has been filed within 90 days of the denial of the motion.

Pursuant to 28 USC § 1257(a), this Court has jurisdiction.

RELEVANT CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment 14 Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Overview

On August 12, 1989, Petitioner was arrested for a crime he did not commit. When the prosecuting attorney subsequently discovered the mistake, he would not dismiss the case unless Petitioner signed a release of those liable for the mistake. Upon Petitioner's refusal, he was tried and convicted by the use of perjured testimony and improper evidence. The conviction was set aside; but, before a new trial could occur, the physical evidence was wrongfully disposed of by the Van Buren Township Police. Four years after his arrest, after the expenditure of sixty thousand dollars in attorney fees and much time and energy, the charges were dropped.

Petitioner filed a civil action for malicious prosecution in the State courts to seek redress. It has taken five years more. But there has been no discovery and no trial, only a series of judicial mistakes. The last of these is the subject of this Petition.

Petitioner narrates the first four years of his Odyssey (the criminal action) in his letter with exhibits (App. at 25a), which is part of the record in the civil action below. What follows are

the essential details of that criminal action as well as those of the civil action. (A companion case, with different Defendants, is the subject of another Petition for Certiorari being filed simultaneously: Chi-Ming Chow v State of Michigan, from the U.S. Sixth Circuit Court of Appeals. That case deals with the failure of State officials to investigate the misconduct that occurred at Petitioner's criminal trial.)

B. The Criminal Action

Petitioner Chi-Ming Chow was born and raised in mainland China; he went to Taiwan, before the takeover of the mainland by the Communist Party. He came to the U.S. in 1959 and became a naturalized citizen. Prior to retirement in 1991, he taught mathematics at Oakland Community College in Farmington, Michigan, for 26 years.

In early August of 1989, about a week before his arrest, Petitioner bought a pair of shoes at the K-Mart store in Van Buren Township, for a trip to Europe he planned to take later that month. He intended to do a great bit of walking while in Europe, and he wanted the shoes to be broken in before he left. On August 12, 1989, the night of the arrest, he went shopping again at the same K-Mart store, which is only ten minutes away by car from his home. He was wearing the shoes he had bought a week before.

After picking up a lock and some bags, he went into the shoe area where, on his own, without the assistance of a salesperson, he found two pairs of new shoes that he also wanted for his trip. He then went with the two pairs of new shoes and other items to the check-out and paid.

At the same time, Jill Fehrenbach, a clerk in the shoe area (who had previously been a student at the Community College where Petitioner taught), believed that Chow had worn an old pair of shoes into the store, put on a new pair, placed the old shoes on the shelf and walked out with the new shoes. She called the K-Mart security guard (Fred Sweet), who stopped

Chow in the vestibule of the store. Fehrenbach then looked on the shoe racks for old shoes and found a pair; she claimed that these had been left by Chow. The pair she found was several sizes larger than the size worn by Chow, a fact not observed until much later. (Transcript, 16, of Hearing on Appeal before Judge Battani on 2/1/91).

At the vestibule, Chow pointed out to the security guard that the shoes he was wearing had obvious signs of being worn: dirt and stones embedded in the sole, wind-blown splash marks all around the shoes, obviously worn heels, and creases where the toe boxes bend when walking. The security guard refused to listen, and asked him to sign an incriminating statement which Chow refused. He demanded, instead, that the police be called; they also refused to listen or to look at the obvious wear signs; they arrested him. This experience was extremely humiliating, as it was closing time and the shoppers filing out of K-Mart crowded to watch as Plaintiff was interrogated and led away in handcuffs behind his back to a police cruiser.

Subsequently, both the security guard and the saleswoman wrote out K-Mart "Loss Prevention" reports. (App. at 47a - foldout). Fehrenbach records that she saw:

> Chow try on a pair of work shoes sold in the footwear department. Then he walked out of the dept. with the new shoes still on his feet. He left his old shoes in dept. on the shelf where the shoes he took are located. Mr. Chow *then walked toward the front check-out with the new shoes still on*. (Emphasis added).

Fred Sweet's report (App. at id.) says that the incident "was witnessed" by Jill Fehrenbach, and that she also witnessed the interview of Chow by Sweet. The time from when he was first observed to the time of arrest was 15 minutes. Sweet reports that Fehrenbach observed Chow "come into the footwear department and tried on two pair of work boots, then placed

them his feet (sic) then tried on a third pair and left them on his feet *and proceeded to walk out of store* failing to pay for merchandise on his feet." (Emphasis added). Mr. Chow was given a chance to sign Sweet's report where it states, "I have read and understand the above. To the best of my knowledge it is true in every respect." But he refused, as it was not true.

Also after the arrest, another report was also filled out by the Van Buren Township Police Department (App. at 95a), which recorded that the store security "states the above suspect had tried on three pair of work shoes and kept the third pair on suspect's feet. *Suspect then paid for two pair of shoes* and attempted to leave the store with the unpaid pair of shoes on his feet." (Emphasis added). These reports, contemporaneous with the initial detention and arrest of Chow, show that the *same story* was told by all: that Chow kept the third pair of shoes on his feet *and then* went to pay and walked out of the store. *Nothing is mentioned about the details subsequently added at the trial*: that the security guard spent 10-15 minutes following Chow around; that Chow walked through various store departments with the new shoes on; that Chow was constantly and deliberately scuffing his heels. All contemporaneous accounts indicate instead that *a direct line was made from the shoe department to the cash register*.

It is noticeable that Fred Sweet managed to turn his report page over to write a few additional lines on the back; he had practically unlimited space to write out any details reported to him or that he, himself, had observed. Similarly, in the statement form for Jill Fehrenbach, on the front were 24 lines, of which she used only 8. So there was no need for compression. They had ample opportunity to record any specific, incriminating details. It is reasonable to infer that they recorded *all* that they had observed that they thought was incriminating. It is notable that Sweet's form specifically requires of the reporter: "Describe Incident in Detail (Use Reverse Side if Necessary)". (Emphasis added).

Plaintiff subsequently demanded K-Mart to produce any videotapes or motion pictures which might prove innocence or guilt -- none were produced. (App. at 29a). So the only contemporaneous recorded evidence were the three incident reports.

Chow feared that the one-week-old shoes, which were the best evidence of his innocence, and which were now in the hands of the police, might be switched or lost or tampered with, so he did several things. First, he had his fingerprints taken at the Van Buren Police Department. Thus, if the shoes were switched, the fingerprints would not be on the substitute shoes. He also asked them to use his fingerprints to attempt to identify his fingerprints on the old shoes that K-Mart claimed he had left on the shelf. On January 24, 1990 the State Police Lab reported that they could not find any prints on the old shoes left on the shelf. (App. at 48a). Also, one week later, he went to the Van Buren Police Department and took pictures of the shoes. (App. at 94a). Two of the pictures show the one-week-old shoes which he wore to the store. The pictures of the shoes are quite detailed and clear, and show that the heels are very worn, which would be impossible to do in 15 minutes in the store unless one held them up to a sanding machine. In addition, there were wrinkles, mud, pieces of grass, and rain splashes -- evidence of an environment other than the polished floor of K-Mart's store.

On November 21, 1989, two weeks after he took the photos, a prosecuting attorney for Van Buren Township (a member of a private law firm hired by the Township), Matthew Curtis, reviewed K-Mart's reports, had a phone call from the Forensic Science Division of the State Police (although the lab report was not formally in writing until the following January), and looked at the two silent witnesses -- the shoes. He indicated that the shoes looked bad and he might consider dismissing the charge (App. at 50a), but he had to investigate the matter further.

At a subsequent pretrial conference on May 1, 1990, Mr.

Curtis did, in fact, offer to dismiss the case, but *conditioned the dismissal upon Mr. Chow's signing a release waiving any and all claims against the Township and K-Mart*. (App. at 30a, 52a, 53a). In doing so, the attorney acted as if he were representing K-Mart -- a commercial enterprise -- as well as the local unit of government. At the time, such agreements were against public policy and void *per se*, though Chow did not know it. Gray v Galesburg, 71 Mich App 161; 247 NW2d 338 (1976). The *per se* rule was modified to a case-by-case basis by Stamps v City of Taylor, 218 Mich App 626; 554 NW2d 603 (1996), which relied on this Court's holding in Town of Newton v Rumery, 480 US 386; 107 SCt 1187; 94 LEd2d 405 (1987).

By this time, nine months had gone by and lots of money and effort had been spent by Mr. Chow in his defense. The dismissal which should have occurred on the evening of August 12, 1989 or shortly thereafter, when Mr. Chow made his compelling demonstration of the worn shoes, was too late, and attached to a condition that was improper. Mr. Chow refused to sign any such release. His reputation had been severely damaged, and his life had been devastated. Trial was set for May 18, 1990.

On May 4, 1990, Mr. Chow and his new attorney, Mr. O'Keefe, went to K-Mart, measured the distance between the shoe department and the front check-out and found that it was 75 steps and took one minute to walk. They then went to the Van Buren Police Department and videotaped the various shoes (the videotape is preserved). Of course, this gave advance notice to the Township of the defense to be used at trial. Chow also asked for a live demonstration at the scene, with someone wearing a new pair of shoes and walking from the shoe department to the front check-out, to compare with the pair Mr. Chow had on the evening of his arrest. His attorney obliged, and, on May 8, 1990, so requested the District Court. (App. at 57a).

Mr. Chow's requested demonstration was not to be, however. Instead, the prosecuting attorney secretly requested the

store detective, Fred Sweet, to create two exhibits: "fifteen minute shoes" and another pair of "one week old shoes". The court later admitted these demonstrative exhibits, without sufficient foundation to show similar conditions, without any objection by Chow's counsel, who had stipulated with the prosecutor before trial to allow them into evidence! Chow was unaware of this stipulation until his sentencing. (App. at 32a, 58a).

During their testimony, Fehrenbach and Sweet embellished greatly so as to bridge the huge gap between their reports (which indicated that Chow had gone directly to the check-out counter), and the large amount of wear and tear visible on the "new" shoes they said he stole. Fehrenbach testified that she observed Chow scuffing his heels as he was walking, and that he didn't go directly to check-out, but took 10-15 minutes after he left her department to walk around the store. (App. at 65a, 97a-98a). Sweet also testified that Chow went to several other departments after leaving the shoe department: the home center department, the patio area (where there are plants and soil -- so as to account for the dirt on the shoe) and the sporting goods department. Sweet also claimed he had followed Chow and had observed Chow continuously scuffing his heels. (App. at 68a, 103a-106a).

Thus, at trial, a one-minute direct walk from the shoe area to the front check-out was magically transformed into a 15-minute scuffing exercise around the entire store, including the patio and lumber area. *No competent eyewitness would have left these details out of the written incident report*. And certainly no one trained as both a security guard and a police officer would have omitted these telling details. And Sweet was so trained, since he was also in the employ of the Van Buren Police Department. (App. at 100a). Prosecutor Curtis used this perjured testimony and built his whole case around it. The "scuffing" was the centerpiece of his opening argument (App. at 96a-97a), of his direct examination of his two witnesses, and of

his closing argument. (App. at 107a-108a). And yet this central observation was never put in the three contemporary reports.

Incredibly, Chow's attorney did not impeach using the discrepancies between the reports and the testimony. Further, the absence of Chow's fingerprints on the old shoes on the shelf was not admitted. And the old shoes -- several sizes too large -- were not shown to the jury, but kept in a bag!

During the trial, six pairs of K-Mart shoes were on the table: the old pair (in a bag) that Fehrenbach that Chow had left; the pair claimed Chow was actually wearing on the night of August 12; a pair of the new shoes that he had purchased that night; the pair Sweet claimed he had worn for 15 minutes; the pair Sweet claimed he had worn for 7 days; and a pair of new shoes furnished by one of Chow's attorneys. This collection is recorded in the fourth photograph taken by Chow. (App. at 94a). The jury probably never had a close look at this confusing collection of various pairs of shoes to distinguish them. Chow's trial counsel did not point out the differences. The jury came back in a half-hour and convicted him.

Chow appealed; his new counsel pointed out that his trial attorney had inexcusably failed to object to the use of the fabricated evidence by Sweet, or to offer the actual shoes that Chow had worn as evidence, or to point out the wear and tear on the actual shoes Chow had worn, or to cross-examine Sweet or Fehrenbach properly concerning the inconsistencies between their reports and their testimony. Wayne County Circuit Court Judge Marianne Battani reversed the conviction on the grounds of ineffective assistance of counsel. (App. at 73a). Judge Battani found defense counsel's performance "truly absurd".

When the Judge gave her ruling, the prosecution agreed to secure the evidence, and keep it. (App. at 74a). This is also recorded on the videotape that Chow made and still has, which will be offered to this Court if this Writ is granted. This videotape shows the various pair of shoes and the process of

sealing the 2-foot by 1½-foot by 1-foot box. It was dated, sealed over with tape, and signed by Mr. Otis, Mr. Stelmach, and Mr. Chow. Mr. Otis (for the prosecution) then signed a receipt acknowledging receipt dated "4/19/91" of the evidence box from the judge. (App. at 77a).

While larceny under $100 is a misdemeanor, nevertheless, the reversal was appealed by the prosecutor to the Michigan Court of Appeals, indicating some importance was attached to the conviction by the prosecutor. Since it was a misdemeanor case, leave was required, and leave was granted by the Michigan Court of Appeals on May 24, 1991.

Ten months later, on March 31, 1992 the Court of Appeals entered an order granting Chow's motion to compel the prosecutor to produce the exhibits. (App. at 78a). Chow wanted to make sure the exhibits were still intact.

In another direction, on May 1, 1992, Chow's then attorney, Mr. Ziem, complained to the Wayne County Prosecutor's Office that perjury had occurred at trial. Wayne County Deputy Chief Prosecutor, Mr. Howard Philippart, made an appointment to review the physical evidence at the Van Buren Police Department on September 28, 1992.

However, before Mr. Philippart could review the evidence, and before the Court of Appeals could see the exhibits, the Van Buren Police Department "lost" the large evidence box containing all of the physical evidence. This large box had been marked with the case number, was signed across the tape to prevent tampering, and it was marked in large letters, "Evidence: Shoes". Inside the box, in addition to the shoes, were also Chow's receipt for his purchases at K-Mart that night and the written report of Jill Fehrenbach.

Now, the very thing that Mr. Chow had worried about had, in fact, come to pass: All the physical trial evidence had been lost, especially his best evidence, the worn shoes he was wearing. Closer examination of the timing is revealing: only

when the evidence was demanded by both the Court of Appeals and the Wayne County Prosecutor's Office did the loss occur. Also revealing is the explanation given: A 10/13/92 letter from the Director of the Van Buren Township Department of Public Safety (its police department) states that an "investigation" was completed regarding the improper disposal of the "evidence" and that Ms. Johnson "received a call to retrieve the shoes as they were no longer needed by the court." She "believed the case to be closed. The evidence was disposed of during a department auction held on August 29, 1992." (App. at 82a). Jean Johnson's statement is attached to this letter, in which she describes the caller as an anonymous "gentleman" (App, at 83a). Her statement does not make sense. Not only are the dates off, but each piece of evidence put into the box, which was also marked "Evidence," had an *evidence tag* (shown in the videotape). And the signing across the tape of several parties was to ensure that the box would not be opened without everyone present.

To compound matters, the Township's letter of 10/13/92 specifically calls Jean Johnson "a civilian clerk". However, subsequent news reports and photos (in the civil record below) show Jean Johnson in a police uniform and identify her as a police officer. (App. at 83a-foldout). Her signature has her badge number after it, also: #766. No police officer would remove sealed evidence with tags from the evidence room and destroy it without making absolutely sure that it was not needed in a trial later on. A simple inference is that the entire Van Buren Police did not want the evidence to be held against them in a subsequent civil lawsuit by Chow in a high verdict county, Wayne County.

The Michigan Court of Appeals, on June 1, 1993, unanimously denied the prosecutor's appeal and remanded the case back to the district court. (App. at 85a). The Court's opinion observed that "the guard testified at trial that he had seen the Defendant scuffing the heels of the stolen shoes while he

walked around the store. However, he omitted any mention of this unusual behavior in his contemporaneously filed incident report." (App. at 90a). The Court also viewed Chow's tape and found in a footnote "no evidence that the auction of the evidence was not in good faith." But the Court was unaware of the original offer to dismiss the case and Chow's refusal to sign a release; the footnote was gratuitous.

Mr. Chow was ready for a new trial, though, since he had the photos, the videotape, and copies of the incident report plus a transcript of the trial. But when Mr. Chow and his counsel, Joseph Wagner, were at a new pretrial conference in July 1993 before District Judge Zaborowski (a different trial judge), the Township's Prosecutor requested the court to dismiss the charge in the criminal case on the basis of the loss of evidence.

Chow was, however, reluctant to accept a dismissal unless he had the right to file a civil complaint, as the hearing transcript reveals. (App. at 150a-152a). It was only when the judge and his own counsel assured him that the dismissal "did not dismiss all possibility" of his filing a civil suit that he accepted the dismissal, with the final words on the transcript being his: "Okay, then we have the right...." (App. at 153a).

The trial court thereupon signed an order of dismissal on the basis that "The physical evidence having been disposed of...." (App. at 93a)

It took four years and four different courtrooms for Mr. Chow to receive vindication in the criminal case, but his treatment in the following five years of his civil case has been even more frustrating: four different courts, but no results.

C. **Civil Proceedings Below**

On July 27, 1994, Mr. Chow filed a civil complaint against Van Buren Township, K-Mart Corporation, Jill Fehrenbach, Fred Sweet, Matthew Curtis, Phil Wakeford (the arresting officer), Jean Johnson and Mark Perkins. No

discovery even occurred, as the Plaintiff's case was motioned to death by all the Defendants and dismissed (improperly) by the trial court.

On October 21, 1994, Wayne County Circuit Court, Judge Cynthia D. Stephens, entered an Order quashing service of process in favor of all Defendants, except Van Buren Township, since the process server (a Wayne County Sheriff) had simply dropped the process off at the Township's offices and never personally served the individuals. Plaintiff subsequently effectively served Defendants K-Mart Corporation and Jill Fehrenbach. Defendant Van Buren Township attempted removal to the U.S. District Court, but the court remanded back to Wayne County Circuit Court, since the Township's removal petition was not timely.

After remand from the U.S. District Court, Defendants K-Mart and Jill Fehrenbach filed a Motion for More Definite Statement, claiming that the Compliant was vague and cursory, forcing them to guess as to the nature of the various claims, and also as to which claims were asserted against which Defendant.

On February 16, 1995, the trial court granted Defendants' Motion for More Definite Statement. Plaintiff's counsel filed an Amended Complaint on March 1, 1995 (App. at 155a), and also filed on April 6, 1995, the Exhibits Supplemental to Complaint which contained Chow's letter of September 14, 1993 and attached exhibits (all in the Appendix at 23a to 94a). Defendants filed a Motion to Strike, which was denied. Then Defendants K-Mart and Jill Fehrenbach filed a Motion for Summary Disposition on April 21, 1995, the claim of "failure to state a claim upon which relief could be granted" under Michigan Court Rule 2.116(C)(8).

Defendant Van Buren Township also filed a Motion for Summary Disposition alleging governmental immunity. On July 21, 1995, the trial court granted Van Buren Township's Motion for Summary Disposition. On July 24, 1995, the court also

granted summary disposition to Defendants K-Mart and Jill Fehrenbach with regard to all of Plaintiff's claims except for the claim of malicious prosecution, ruling that Plaintiff's Complaint was sufficient for that claim.

Defendants Jill Fehrenbach and K-Mart Corporation subsequently, on September 6, 1995, filed *another* Motion for Summary Disposition with regard to Plaintiff's remaining claim for malicious prosecution. As to this remaining cause of action, Defendants asserted that there was a lack of genuine issue of material fact (although no discovery had occurred) under Michigan Court Rule 2.116(C)(10).

The judge heard oral argument on the motion and, while she found that there was a termination of the criminal proceeding in favor of Chow (one element in the claim for malicious prosecution), she nevertheless dismissed, finding *as a matter of law* that malice -- another element of the claim -- was absent. The court failed to note the many exhibits which existed without discovery and which pointed to malice on the part of K-Mart and Fehrenbach, including the refusal of Chow to sign a release, the discrepancy between Fehrenbach's and Sweet's reports and their testimony, as well as photos of the shoes. The judge took a question of fact away from the jury.

This is contrary to the rule that "the existence of malice in the original proceeding is *always* a question of fact exclusively for the determination of the jury under proper instructions, unless there is an entire lack of evidence...." 52 AmJur2d, "Malicious Prosecution" at § 156, p 280. (Emphasis added). It is quite likely, in view of the transcript, that the court ignored all the exhibits which Chow had filed in the cause, including the photos, and perhaps ignored the law's framing of malice as "initiating *or continuing* the proceeding with malice *or a primary purpose other than that of bringing an offender to justice*." Michigan Standard Jury Instructions 2d 117.01, *Malicious Prosecution - Criminal Proceeding* (emphasis added). She failed to allow a jury to make the obvious inference that malice existed

because of a motive to defeat any claim for civil damages.

Petitioner thereupon timely appealed to the Michigan Court of Appeals, but only of the last ruling by Judge Stephens. In the course of the appeal, the Court of Appeals refused to allow a supplemental brief when new counsel was obtained for Chow and, on its own, decided to rule without oral argument! On July 8, 1997, the Court of Appeals released its opinion denying the appeal, *on an entirely new basis* -- that the absence of probable cause (rather than malice) could not be shown: since Chow had been convicted, there was no "absence of probable cause," another element of a malicious prosecution claim. The Court stated:

> Nonetheless, notwithstanding reversal on appeal, *which was not for fraud or perjury* on behalf of these appellees, the very fact of conviction *conclusively establishes* probable cause *and thereby precludes a suit* for malicious prosecution. Nawrocki v Eberhard Foods, Inc., 24 Mich App 646, 650-651; 180 NW2d 849 (1970) (Emphasis added) (App. at 4a).

The Court had converted the usual exception (that fraud or perjury must be shown to overcome the defense of a conviction) into a newer, much narrower exception: that *reversal* had to be on the basis of fraud or perjury, an impossibility -- a rule not to be found anywhere but in that panel's ruling.

Chow had *all along* claimed that perjury and fraud were used to obtain his conviction, and that the prosecution destroyed some of the evidence useful to prove it. The Court's opinion now barred Petitioner's chance to prove allegations of perjury and fraud -- the fruit of Defendants' wrongdoing (the conviction) became a shield against his tort claim. The court was not even going to allow Petitioner *a hearing* to show one of the elements of his claim.

It is at this point that the federal question sought to be reviewed occurs. His procedural due process rights and his right to equal protection of the laws under the Fourteenth Amendment were now being breached. Not until this point had the Michigan Courts announced a conclusive presumption preventing him from access to the courts, denying him due process of law, and denying him the right that other tort victims have, to sue for damages. The specific mention of the U.S. Constitution made at this stage is generic, but it is done by the Petitioner himself; his counsel at this point files what amounts to cover letters for Chow's own words -- words that are not in his native language. He addresses the Court of Appeals in the Motion for Reconsideration; after pointing out that the Court's record appears incomplete, and renewing the basic facts, he argues that "our National Constitution assures equal justice and equal protection of the laws for all citizens born or naturalized in the United States." (App. at 220a). And he attaches various letters from politicians and agencies supporting his demand for an investigation. These appear also in App. at 118a-140a. Subsequently, throughout the remainder of the appellate proceedings, Petitioner -- on his own in attachments to his counsel's brief assertions -- appeals to the U.S. Constitution and claims rights thereunder.

Thus, the federal question here was created by "an unexpected decision" at the appellate level (Stern, Gressman, Shapiro, Supreme Court Practice, 6th ed, 1986, p 129), and could not have been raised earlier. While the subsequent constitutional references are general, they are made both at the Michigan Court of Appeals and the Michigan Supreme Court; these references should be "a sufficient base for this court's consideration of the federal issue." Webb's Fabulous Pharmacies, Inc. v Beckwith, 449 US 155, 159, n 5; 66 LEd2d 358;101 SCt 446 (1980). *See also* Taylor v Kentucky, 436 US 478, 482, n 10;56 LEd2d 468; 98 SCt 1930 (1978).

The Motion for Rehearing was denied by the Court of

Appeals and Leave to Appeal was filed in the Michigan Supreme Court.

The Application for Leave contained Plaintiff's exhibits. His counsel also gave, as one of the three "Reasons and Grounds for Appeal," that the Court of Appeals ruling "could do irreparable harm to Plaintiff-Appellant by denying him civil remedies for his cause of action against the Defendant-Appellees." (Delayed Application for Leave to Appeal, p 7; notice had been timely given and the Court treated the Application regularly.)

In the briefs in the Michigan Supreme Court, additional exhibits were attached concerning Mr. Chow's efforts to get investigations by the criminal justice system in the State of Michigan as to the conduct that occurred in his criminal trial. (App, at 176a-182a).

The Supreme Court of Michigan denied leave "because we are not persuaded that the question presented should be reviewed by this court." (App. at 1a). A Motion for Reconsideration was filed timely, which included Chow's personal appeal to the U.S. Constitution and to "fairness and law". (App. at 173a-174a).

On September 28, 1998, the Motion for Reconsideration was denied by the Supreme Court of Michigan. (App. at 21a).

ARGUMENT

I. SUMMARY DISPOSITION SHOULD BE USED TO REVERSE BECAUSE OF A CLEAR ERROR WHICH DEPRIVED PETITIONER OF HIS DUE PROCESS RIGHT TO A TRIAL OF HIS CLAIM BY MAKING AN IMPOSSIBLE CONDITION PRECEDENT

Petitioner was deprived of the right to have his tort claim heard a trial, a right given other civil litigants in Michigan. This has been done arbitrarily and capriciously, either by design or by ignorance.

This deprivation may have occurred as a result of intentional change in the State's law as announced by the Michigan Court of Appeals and the refusal to review by the Michigan Supreme Court -- in which case, there is a new State policy in effect. But, since the Appeals Opinion was unpublished and the Supreme Court declined to review the error, it is far more likely that what we have here is not a new principle, but rather a misunderstanding of the procedure in the law of this tort, contrary to prior Michigan law, and contrary to all other States. If so, the best solution is that the case should be summarily reversed by this Court.

The error here is actually something quite simple: The Court of Appeals just misunderstood Michigan law and procedure. It cited Nawrocki v Eberhard Foods, Inc., 24 Mich App 646 (1970), without understanding what Nawrocki -- and the tradition it was citing -- actually stood for. Nawrocki stated that the *pleadings* of a malicious prosecution plaintiff, who has been convicted and has had the conviction set aside, must set forth facts showing the narrow exception to the general rule that a conviction is conclusive proof of probable cause. That exception is that the conviction was "procured by false or fraudulent testimony or other unlawful means." Id. at 650 (citations omitted). This exception is long standing in Michigan and in a majority of the States.

The exception, however, has always been stated in such a way as to allow such a plaintiff, whose conviction has been overturned on appeal, the chance *to plead* and *show at trial* that his conviction was obtained by fraud, perjury or other corrupt means. If the pleadings do show that, then the pleadings are proper and plaintiff may adduce evidence at trial. See Moore v Michigan National Bank, 368 Mich 71, 73; 117 NW2d 105, 1

ALR3d 948 (1962) and Piechowiak v Bissell, 305 Mich 486, 497 9 NW 2d 285 (1943), *citing* 1 Cooley on Torts (4th ed), p 397, ¶ 11:

> A conviction of the accused is conclusive evidence or probable cause, unless it was obtained by fraud or unfair means, *which may be shown in rebuttal*; when this is true though afterwards, on appeal, the conviction is set aside and the accused acquitted. Id. (Emphasis added)

As Cooley and other authors make clear, *the fraud or unfair means may be shown to the jury at the civil trial for malicious prosecution*. The conviction is something to be rebutted, but only by certain, narrowly-defined evidence. In the instant case, the Michigan Court of Appeals and Supreme Court have misunderstood the rule and converted the rebuttal -- in the civil case -- into a requirement that the reversal of *the criminal case on appeal* be for the reasons of fraud or perjury. The Courts have simply got the timing off.

The Michigan Court of Appeals decision below states:

> Nonetheless, notwithstanding reversal on appeal, which is not for fraud or perjury on behalf of these appellees, the very fact of the conviction conclusively establishes probable cause, and thereby precludes a suit for malicious prosecution. (App. at 4a)

The Opinion has taken a rule of pleading and evidence in the civil case and converted it into a rule which *precludes* the civil case. This is not the law -- not in Michigan and not elsewhere. As 52 AmJur2d, "Malicious Prosecution," § 179 notes, there are two lines of State cases on the effect of a prior conviction: 1) that the prior conviction is conclusive evidence "unless the conviction was obtained by fraud, perjury, or other corrupt means," and 2) that the conviction is not conclusive, but merely evidence "which may be rebutted by competent evidence that

clearly overcomes the presumption arising from the fact of the conviction in the first instance."

Michigan has adopted the first, narrower exception, which leaves open only the question as to whether or not the conviction was obtained by fraud, perjury or other corrupt means. As AmJur points out, that this "*latter question is one for the jury*". Id. at page 299 (emphasis added). That is, the facts tending to show fraud or perjury or other corrupt means are to be brought out in the subsequent *civil* trial. Demonstrative of this rule are the following cases.

In Kraft v Montgomery Ward, 220 OR 230; 348 P2d 239; 92 ALR2d 1 (1959), the Court held:

> It was for the *jury* to determine from the facts whether or not the conviction of the plaintiff in the city court on the charge of trespass was obtained by fraudulent or other improper means. 220 OR at 246. (Emphasis added).

Similarly, in McMahon v Florio, 147 Conn 704; 166 A2d 204 (1960), where the Connecticut Court of Appeals stated:

> The issue whether the plaintiff's conviction in the Town Court was obtained by fraud, perjury or other corrupt means *should have been submitted with proper instructions to the jury to be resolved by them as an issue of fact*. 147 Conn at 708. (Emphasis added).

See also a Massachusetts case, Della Jacova v Widett, 355 Mass 266; 244 NE2d 580 (1969). There, it was held that the civil pleadings needed to allege facts to show that the conviction was caused by the wrongful, false testimony of the defendant. Since the pleadings did so, the verdict for the malicious prosecution plaintiff was upheld.

Nowhere in any State, ever, is there or has there been a

requirement that the *reversal* of the criminal case on appeal *be obtained on the basis of fraud or perjury*. Those issues are findings of fact, not made (normally) by appellate courts. Reversals come for other reasons, since the issue in the criminal case is the guilt or innocence of the defendant, not the fraud or perjury of the prosecution's witnesses, although that may be alleged by the defense. Fraud or perjury are items that would normally be developed *outside the record* of the criminal trial; and the appellate court will confine itself to the record. A reviewing court might say that there should be reversal since evidence was excluded which should be admitted *to allow defendant to show that a prosecution witness was lying*, e.g., People v Vasquez, 448 Mich 856; 528 NW2d stet (1995). But a reviewing court, certainly in Michigan, would *not* make a *finding* that perjury had, in fact occurred.

The grounds for reversal are far more prosaic and are questions of law --e.g., as in this case, the ineffective assistance of counsel; or, in other cases, the admission of improper evidence, or the exclusion of proper evidence; or a bad instruction to the jury; or failure give a proper instruction that was requested; or against the great weight of the evidence. But not a finding that perjury occurred. This is because, as the Michigan Court of Appeals has stated, if a defendant on appeal argues that 'perjured testimony' was used,

> "this court does not judge the credibility of witnesses. People v Nawrocki, 6 Mich App 46 at 58; 150 NW2d 516 (1967); *cert den* 389 US 942; 88 SCt 304; 19 LEd2d 296. (Note: this is the same Nawrocki as in Nawrocki v Eberhard Foods, *supra*.)

Thus, it is quite clear that an attempt to get a reversal for perjury is impossible.

West Michigan Digest 2d (1932 to date) for "Criminal Law" has no outline topics under "Appeal and Error on Certiorari" showing grounds for appeal as "fraud, perjury, or

other corrupt means". There is an outline entry for "Inherently improbable testimony; apparent falsity" but a turn to the Digest shows no cases in the 2d edition for that theoretical topic.

So, as is apparent, the Court of Appeals Opinion below requires an impossibility. The Opinion demands that to set up a civil action for malicious prosecution, an innocent person who is convicted on the basis of fraud, perjury or other corrupt means must have that conviction overturned on the basis of fraud or perjury, and not on some other. Such a case, in Michigan jurisprudence, has not been found by this counsel.

While the courts in Michigan and elsewhere have often commented on the "disfavored status" of actions for malicious prosecution for public policy reasons -- see King v Arbic, 159 Mich App 452, 464 406 NW2d 852 (1987) and Renda v International Union, UAW, 366 Mich 58, 74 114 NFW2d 343 (1962), it is wrong for the appellate courts to convert this disfavored status into a *denial of the ability to pursue* a legitimate tort claim out of ignorance of the law and procedure, this is what happened below and should be summarily reversed.

What *should* have happened on appeal is this: the Court of Appeals should have reversed the Wayne County Circuit Court below because it had taken a jury question and mistakenly converted it into a question of law. Petitioner's case would then proceed to a jury trial, using Plaintiff's pleadings to present the issue of fraud, perjury or other corrupt means to the jury.

Plaintiff did, in fact, *plead the issue explicitly* in their Amended Complaint and its exhibits. (App. at 157a-158a)

Indeed since the initial conviction, Chow and his counsel have steadfastly maintained in briefs and argument to every court that the evidence brought against him at the trial was false and wrongfully fabricated to counteract the evidence that the shoes he was wearing were not new shoes. However, the Court of Appeals upheld the reversal of the conviction simply on the ineffective assistance of counsel and refused to hear the issue of

prosecutorial misconduct. (App, at 90a). There was no reason for either the circuit court or the Court of Appeals to go into that when 1) they couldn't go into credibility, and 2) there was a simple legal ground, the ineffective assistance of counsel, upon which to grant a reversal.

Now, the fact that the reviewing courts took the proper, legal -- and easy -- way to reverse should not be used to bar Chow from a civil suit later on, where he could make a showing that fraud and perjury occurred. This would improperly reward the perjurers by letting the success of their scheme prevent its subsequent exposure in the civil case. And it would frustrate unreasonably the right of a tort victim to have his case heard.

It is unlikely that the Court of Appeals even recognized its mistake and the consequences that flow from it. The Michigan Supreme Court should have done that, but did not do so. The mistake is so obvious and basic that summary disposition would be appropriate, since it deprived Petition of his right to have his claim heard, protected by both the Due Process and Equal Protection Clauses of the Fourteenth Amendment, which requires "an opportunity ... granted at a meaningful time and in a meaningful manner ... for [a] hearing appropriate to the nature of the case." Logan v Zimmerman Brush Co., 455 US 422, 438; 102 SCt 1148; 71 LEd2d 265 (1982)*citing* Boddie v Connecticut, 401 US 371 at 378 (1971).

II. THE DECISION OF THE MICHIGAN COURTS BELOW VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BY ELIMINATING THE RIGHT TO TRIAL OF THOSE VICTIMS OF MALICIOUS PROSECUTION WHO ARE UNJUSTLY CONVICTED BY MEANS OF FRAUD OR PERJURY.

If the decisions below are the result of an intentional policy change its common law, such new policy violates both the Equal Protection and Due Process rights of Petitioner. Let us examine equal protection first.

The bar created below applies *only* to malicious prosecution torts and not other torts. More specifically, the bar discriminates against a discrete set of tort victims in malicious prosecution cases, the ones who are the *most aggrieved*: those who have, in fact, been convicted as a result of the fraud or perjury of the tortfeasors. To deprive these victims, who -- among all malicious prosecution victims -- suffered the most injustice, of a right of redress is discriminatory in an invidious way. Not only does the decision deny them a hearing, but it insults them by saying that the worst part of their injury (a conviction) is that which acts to prevents them from bringing suit at all.

The right to sue to correct a wrong is fundamental in a system such as ours, where the rule of law is to replace the rule of force. Certainly a State is interested in finality and not in having contradictory results in a criminal trial and a civil trial: If there is a conviction, the *fact* of the conviction ought not to be relitigated *unless the wrongdoing of the defendants*, *procured* the conviction. That is something that surely the State has no interest in denying.

There is certainly no reason for a State to have a rule narrower than that, proposed by this very Court for similar wrongs under 42 USC 1983. See Heck v Humphrey, 512 US 477; 144 SCt 2364; 129 LEd2d 383 (1994), where this Court held that, under Section 1983, a plaintiff who claims an unconstitutional conviction:

> must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination,

> or called into question by a federal court's issuance of a Writ of Habeas Corpus. 512 US 477 at 483.

This standard does not require that the reversal on appeal be for the grounds of perjury or fraud, since such would be impossibility. And members of this Court have indicated a desire to encourage the resolution of such claims in State courts -- rather than resort to federal courts. See, for example, the dissent of Rehnquist in California v Minjares, 443 US 916, 925-926; 100 SCt 9; 61 LEd2d 892 (1979) (on rem) (1979); also the various opinions in Parratt v Taylor, 451 US 527; 101 SCt 1908; 68 LEd2d 420 (1981). To allow State courts to bar such plaintiffs from courthouses of the State court is to encourage such plaintiffs to seek redress (where government officials are defendants) in the federal courts, with its more reasonable standard, under 42 USC 1983.

This Court, in Lindsey v Normet, 405 US 56 (1972), found the Equal Protection Clause violated by a State law which required a double-bond from a tenant wishing to appeal from an adverse landlord-tenant decision, a requirement in no other appeals. The Court held that this heavily burdened the statutory right to appeal and did not effectuate the State's legitimate purposes.

Even more so in this case: the rule laid down by the Michigan courts does not just *burden* the right, *it eliminates* it, for this Petitioner and others where a conviction was obtained by fraud or perjury. Even if the standard is the least restrictive -- a rational basis rather than heightened scrutiny or compelling interest -- there is *no rational basis for this policy*. It discriminates unnecessarily against a group of tort victims, against the most deeply injured of the victims of malicious prosecution.

Similarly, this Court in M.L.B. v S.L.J., 519 US 102; 117 SCt 555; 136 LEd2d 473 (1996), held that the State could

not bar an appeal (for an indigent whose parental rights were terminated) because of failure to pay the fees for a hearing transcript. The Court there recognized the principle announced in Griffen v Illinois, 351 US 12 76 SCt 585 100 LEd 891(1956) that the State may not "bolt the door to equal justice". Id. at 24 (Frankfurter, concurring).

While such cases involved fees and money, the present case involves *the creation of an impossibility*. "When an appeal is afforded ... it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." Lindsey v Normet, 405 US 56; 92 SCt 862; 7731 LEd2d 36 (1972). *And so here* -- the initial trial cannot be denied on the basis of an invented *exclusionary* rule that lacks any a rational connection to any valid public policy. Such a bar, as presented in this case, should be struck down.

III. THE DECISION OF THE MICHIGAN COURTS BELOW VIOLATES THE FOURTEENTH AMENDMENT SINCE, BY BARRING A HEARING ON HIS CLAIM, IT DEPRIVES PETITIONER OF HIS PROPERTY RIGHT WITHOUT DUE PROCESS

The Due Process Clause of the Fourteenth Amendment, as well as the Equal Protection Clause, requires reversal, since the Michigan courts below have improperly deprived Petitioner of his right to have his tort claim heard in a trial. In such cases, both clauses of the Amendment have traditionally been involved; an analysis under each clarifies aspects not brought out by the other.

What is complained of here goes "to the essence of a litigant's right of access to the courts, whether he be rich or poor, black or white." Lindsey v Normet, 405 US 56, 84 (dissent, in part, of Douglas). "Due process includes the right 'to

sue and defend in the courts,' a right we have described as 'the alternative of force' in an organized society. Chambers v Baltimore and Ohio R Company, 207 US 142, 148." Id.

It appears that the substantive law of Michigan allows an action for malicious protection to those in Mr. Chow's position, but procedurally the remedy is not available, if the Michigan court's assertion below is now the law. Access to the courts cannot be something that is illusory, held out in principle but denied in practice.

As this Court has said in Heck v Humphrey, supra (1994), the absolute rule of a bar to a suit for malicious prosecution as a result of conviction does not exist and did not exist even in the Nineteenth Century, since there was a limited exception available to litigants to show "that the conviction had been obtained by some sort of fraud." Id. at 485, n 4, *citing* Crescent City Livestock Company v Butcher's Union Slaughterhouse Company, 120 US 141 7 SCt 472; 30 LEd 614 (1887). To allow States to deny this remedy would be, as earlier noted, to encourage litigants to pursue the more favorable remedy of a suit under Section 1983 and to pursue it, not in State court but in federal court where, as Heck held, the conviction of a crime does not wipe out a person's Section 1983 claim for damages for unconstitutional conviction.

Further, the language of the Michigan Court of Appeals opinion here creates an impermissible conclusive presumption: that a conviction is proof of probable cause unless the conviction is overturned for fraud or perjury. This conclusion does not inexorably follow from the premises as a matter of fact or logic, since the conviction may have been obtained by perjury but the reviewing court could not reverse by making such a finding. This Court has earlier held that conclusive presumptions, where the conclusion does not automatically flow from the premises, are improper as a matter of both evidentiary law and as a matter of statutory schemes. See Stanley v Illinois, 405 US 645 92 SCt 1208; 31 LEd2d 551 (1972) (invalid presumption that an unwed

father is unfit to exercise custody over his children); Turner v Dept. of Employment Security, 423 US 44; 96 SCt 249; 46 LEd2d 181 (1975) (Utah statute making pregnant women ineligible for unemployment compensation invalid as incorporating a conclusive presumption that women are unable to work during the 18-week period prior to delivery).

There is no question that there has been a property interest of Petitioner -- his claim for damages: a cause of action is property: Mullane v Central Hanover Bank & Trust Co., 339 US 306; 70 SCt 652 94 LEd 865 (1950). Nor is there any question that this claim has been terminated by the ruling of the Michigan Court of Appeals. This ruling terminated his claim without a trial on the merits -- a termination *ab initio* saying *he could not have a trial* since his conviction was overturned, years before, on some other basis. The State court has conclusively presumed his claim was without merit.

This is very similar to the denial of due process which this Court struck down in Logan v Zimmerman Brush Co., 455 US 422 (1982). There, the petitioner had timely filed his claim alleging unlawful termination of his employment; but the Fair Employment Practices Commission of Illinois had negligently scheduled a factfinding conference for a date five days after the expiration of the 120-day statutory period to hear such claims; and the Illinois Supreme Court held that the Commission's failure to convene the hearing within the 120 days deprived it of any jurisdiction to consider petitioner's claim. This Court concluded that he was deprived of a protected property interest in violation of the Due Process Clause of the Fourteenth Amendment (his claim). In a separate opinion, other justices of this Court held that Logan's right to equal protection of the laws was also denied.

The Opinion of this Court in that case states that this Court "traditionally has held that the due process clause was to protect civil litigants who seek recourse of the courts, either as defendants hoping to protect their property or as plaintiffs

attempting to redress grievances." 455 US 422, 429. And thus, there are "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording the party the opportunity for a hearing on the merits of his cause" *quoting* Societe Internationale v Rogers, 357 US 197, 209; 78 SCt 1087; 2 LEd2d 1255 (1958).

In Logan, the unconstitutional deprivation took place as a result of a wrong decision of the Illinois Supreme Court. Here, the unconstitutional deprivation took place as a result of a wrong decision by the Michigan Court of Appeals which was upheld by the Michigan Supreme Court. And here there should also be constitutional limitations on the Michigan Courts' power to dismiss Chow's claim without a hearing on the merits.

While the State may, through its legislature, change its own rules of tort law, the State courts cannot arbitrarily deprive a citizen of a hearing on a tort claim that exists:

> The state may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations ... or, in an appropriate case, filing fees.... And the state certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule.... What the Fourteenth Amendment does require, however, 'is an opportunity ... granted at a meaningful time and in a meaningful manner,' ... for a hearing appropriate to the nature of the case. 455 US 422 at 437-438. (Citations omitted).

So, in this case, where there has been no legislative hearing to alter the common law, and where a claim that formerly was valid is now arbitrarily denied a hearing, the Due Process requirements of the Fourteenth Amendment have not been met.

CONCLUSION

For these reasons, Petitioner requests this Court to grant this petition.

Respectfully submitted,

By: /s/_____
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Counsel of Record for Petitioner
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S. Main Street, Suite 700
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Dated: December 28, 1998

APPENDIX A

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

Conrad L. Mallett, Jr.

110961

CHI-MING CHOW Plaintiff-Appellant	)	
v.	)	**SC: 110961**
	)	**COA: 191046**
VAN BUREN TOWNSHIP Defendant,	)	**LC: 94-422740**
and	)	
K-MART CORPORATION and JILL FEHRENBACH, Defendants-Appellees.	)	

ORDER
July 28, 1998

On order of the Court, the delayed application for leave to appeal is considered, and it is **DENIED,** because we are not persuaded that the question presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

/s/_____
Corbin R. Davis
Dated: July 28, 1998

Orders and Opinions Below

STATE OF MICHIGAN

COURT OF APPEALS

CHI MING CHOW,	)	UNPUBLISHED
Plaintiff-Appellant,	)	July 8, 1997
	)	
	)	**Case No.**
v	)	**No. 191046**
	)	**Wayne Circuit Court**
VAN BUREN TOWNSHIP,	)	**LC No. 94-422740 NZ**
Defendant,	)	
and	)	
K MART CORPORATION	)	
and	)	
JILL FEHRENBACH,	)	
Defendant's-Appellees	)	

_____/

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM

Plaintiff appeals by fight summary disposition on his claim for malicious prosecution against defendants K Mart

---

* Circuit judge, sitting on the Court of Appeals by assignment. Corporation and Jill Fehrenbach. This case is being decided without oral argument pursuant to MCR 7.214(E).

As reflected in this Court's opinion in *People v Chi Ming Chow* (No. 138761, June 1, 1993), plaintiff was

prosecuted for larceny under $100 under a township ordinance. For present purposes, it is accepted that the prosecution was instigated by the appellees. Plaintiff was convicted, but on appeal to circuit court obtained a new trial on grounds of ineffective assistance of counsel. This Court affirmed the circuit court's ruling, but on remand, because evidence crucial to the prosecution had been lost, the case was *nolle prosequied*.

Nonetheless, notwithstanding reversal on appeal, which was not for fraud or perjury on behalf of these appellees, the very fact of conviction conclusively establishes probable cause and thereby precludes a suit for malicious prosecution. *Nawrocki v Eberhard Foods, Inc,* 24 Mich

App 646, 650-651; 180 NW2d 849 (1970).

Affirmed.

/s/ Mark I. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Cynthia D. Stephens

Dated: July 24, 1994

CHI-MING CHOW Plaintiff,	)	
v.	)	**Case No. 94-422740**
K-MART CORPORATION and JILL FEHRENBACH, Jointly and Severally Defendants.	)	

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Orders and Opinions Below

(313) 961-7321

_____/

ORDER GRANTING SUMMARY DISPOSITION OF DISMISSAL OF DEFENDANTS KMART CORPORATION AND JILL FEHRENBACH

At a session of said Court heard in the City of Detroit, County of Wayne, State of Michigan on

This matter having come on to be heard on Motion by Kmart Corporation and Jill Fehrenbach for summary disposition, the parties being represented in Court, oral arguments having been given, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that summary disposition of dismissal of Defendants *KMART Corporation* and *Jill Fehrenbach* is hereby **GRANTED** for the reasons stated from the Bench

7

EXHIBIT D

Alternate acting for Judge CYNTHIA D. STEPHENS

Orders and Opinions Below

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHI-MING CHOW, Plaintiff,	)	
vs	)	**Case No. 94 422 740 NZ**
K-MART, et al., Defendants.	)	

MOTION HEARING

BEFORE THE HONORABLE CYNTHIA D. STEPHENS, CIRCUIT JUDGE

Friday, September 29, 1995 - Detroit, Michigan

APPEARANCES:

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Appearing for the Defendant: F. PETER BLAKE
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DONNA K. SHERMAN, CSR# 2691
Registered Professional Reporter

TABLE OF CONTENTS

WITNESSES:

(none)

EXHIBITS:

(none)

[3]

(Friday, September 29, 1995)

THE COURT: 94 422 740 NZ, Chi-Ming Chow versus K Mart Corporation and Jill Fehrenbach.

Counsel, would you state your appearances for the Record, please.

MR.BLAKE: Peter Blake on behalf of the defendant.

MR.GLIHA: Gregory Gliha, GLIHA, on behalf of the opposing party, plaintiff, Chi-Ming Chow.

MR. BLAKE: May I assume as I do every time I'm in front of your Honor that you have read our motion?

THE COURT: Yes, and tried to understand.

MR. BLAKE: Okay, after reviewing the plaintiff's response, I find that they have failed to comply with the request of M.C.R. 2.116 (g) (4) that provides that when a party files a motion alleging no genuine issue of any material fact *that* the adverse party may not rest upon the mere allegations or denials in his or her pleadings, but must by affidavit or otherwise set forth specific facts showing that there is a genuine issue for trial.

As I've indicated in my motion, I believe that there is no genuine issue as to any material fact in the four elements of the claim for malicious prosecution, which is the only remaining claim in the plaintiff's

[4]

complaint.

Here the plaintiff asserts that there was no probable cause to pursue the criminal proceeding against the plaintiff and that Miss Fehrenbach acted with malice.

However, that mere allegation is made without any supporting affidavit or any other documentary evidence or any other testimony or pleading to support that factual statement.

Indeed, your Honor, as you can see from the affidavits and the pleadings that I have filed, the police report and the copy of the order dismissing the case that, the plaintiff's claim should fall because there is no genuine issue of material fact to any of the elements. I'd go through each of the four. I've set them forth in particularity and with specificity in my motion, those four elements, I would go through, one, that a criminal proceeding --

THE COURT: Counsel, you don't have to do that.

MR. BLACK: I'm satisfied with my pleading. And I'm satisfied that the response that plaintiff has filed does not meet the minimum requirements that they must come forward with and create a genuine issue, that there is none. My client is entitled to summary Judgment on the other remaining claim.

THE COURT: Counsel.

[5]

MR. GLIHA: Your Honor, I'm here on behalf of Mr. Chow. Mr. Chow has fired his old counsel. This is the second time that this summary disposition issue has been brought before this Court. The first time the defendant's tried a 2.116 (c) (8) summary disposition, failure to state a claim, and they lost on that part.

Now they are here trying under a (c) (10) that there are no issues of material fact to be decided in this case.

We have a problem here. There's bean no discovery at all taking place in this case. What they're trying to do is take care of this case by motion and --

THE COURT: Well, Counsel, the case was filed.

MR. GLIHA: July of '94.

THE COURT: July of 1994. So if there was no discovery done, that's as attributable to your client as to his.

And when I wander through here and look at what I got, I like to focus on this issue of malice and what, if anything, you believe you've presented to me that would allow you to say that you met your burden of going forward on malice.

MR. GLIHA: On malice?

THE COURT: Please.

MR. GLIHA: Your Honor, I would point to you in

[6]

our brief two exhibits. One exhibit is the statement made by Miss Fehrenbach, Exhibit C, which states that she witnessed Chi-Ming Chow trying on a pair of work shows, and then he walked out of the department with his old shoes on his feet. He left his old shoes where the shoes he took are located. Mr. Chow then walked toward the front checkout with the new shoes still on.

She then in trial testimony, Exhibit D, adds that she observed Mr. Chow shuffling his heels. At page 50, line 25.

THE COURT: Yeah, I read it. So?

MR. GLIHA: What she is doing here is she is changing her testimony completely. She has not put in her loss prevention report the fact that --

THE COURT: The fact that there's additional information offered at trial than that which was offered in a brief form is malice.

MR. GLIHA: It's bad faith.

THE COURT: That's bad faith.

MR. BLACK: It's very bad faith. She was a student at Oakland Community College where my client was a professor.

THE COURT: Yeah, so? What I thought I might have gotten from you is something that said that she was a student and I gave her a bad grade or something that would

[7]

have allowed me to infer some evil motive. I don't see it. Is it here some place and I'm not perceiving it?

MR. GLIHA: I understand what you're saying, but malice can be inferred from a lack of probable cause.

THE COURT: Under certain circumstances. Do you want to talk about the case you cited? That case was outrageous. It was clear in that case there was no basis in real life or imagined for the case to be brought.
I don't know that I can look at these circumstances and say that the story is inherently incredible as they'd say in a criminal case.

You believe that these circumstances are like those in the case that you cited for the fact that the mere lack of probable cause can meet the burden of malice?

MR. GLIHA: The mere lack of probable cause can have an affect on the fact that, of malice or the lack of or actually the presence of malice. And she did in bad faith. What the defendant has cited in his brief -- four elements in this case --

THE COURT: Do you remember what was happening here, that lead the Court to make the findings that the circumstances and the lack of probable cause could lead to an inference of malice?

MR. GLIHA: No, I don't, your Honor.

[8]

THE COURT: How about Weiden, where the parties had a really bad history before and a subsequent action was joined?

R. BLACK: No, I don't, your Honor.

THE COURT: Okay, what else do you want me to know, sir?

MR. GLIHA: Your Honor, there is a question of, I believe, we have a few problems here. One is the fact that, as a general rule, summary disposition before the completion of discovery is not considered anything but premature.

THE COURT: Did you file a 2.116 motion, an affidavit that I didn't see?

MR. GLIHA: No, your Honor.

THE COURT: Okay.

MR. GLIHA: I would like to file leave to amend the complaint to comply with the lack of the factual basis for the malicious prosecution claim that was presented as a, by the defense as a reason for summary disposition. I mean -THE COURT: Your (c) (8) motion, they lost their (c) (8) motion. The Court made a determination that they had an adequate pleading to give you notice of what it was, to have notice of what it was they were to defend. And that the cause of action that they pled was one that

[9]

was cognizable in America. We got past that.

The point now is whether or not you can meet your burden of going forward on the elements. That's the only thing we find ourselves in.

MR. GLIHA: That is correct, your Honor.

THE COURT: Your malicious pleading is okay.

MR. GLIHA: There's no defect in the pleadings.

Your Honor, as far as the attached discovery and the trial exhibits that I have attached, I mean, I can see nothing but bad faith on the part of this woman.

She made no attempts, according to her testimony she directly contradicts what she wrote in her report. She stated that she saw him directly go to the check out.

In her trial testimony she stated that she saw him shuffling his shoes, so it can corroborate with the other store detectives.

THE COURT: Did you attach the testimony of the other store detectives?

MR. GLIHA: Pardon me.

THE COURT: Did you attach the testimony of the other store detectives here? The attachment --

THE COURT: Is her testimony.

MR. GLIHA: No, I did not --

THE COURT: Did you argue that the testimony was recent fabrication to being in line with the other

individuals?

MR. GLIHA: That is -- is that my argument

THE COURT: Did you argue that in writing?

MR. GLIHA: No, I did not. But in light of looking at the evidence, your Honor in the time frame involved with all of this, I find that this is quite extraordinary and a most serious case, especially in light of the fact of the exhibits I have listed, the time that he was in the store and the fact that these stories were all brought up.

The part of the evidence, for example, and the allegations in regards to the lack of evidence. This evidence that was destroyed by the Van Buren Police Department.

It was preserved by my client by photograph and by video. They argue that a dismissal without it being on the merits is not a termination in favor of the plaintiff. I would disagree totally. This right here is evidence that they could have went forthwith under the parole evidence rule to prosecute if they so felt that this, in fact, these were new shoes.

THE COURT: What is it that you believe could have gone forward at the time of trial?

MR. GLIHA: At the time that the case that was dismissed.

THE COURT: You mean the People of the State of

Michigan?

MR. GLIHA: Van Buren Township, your Honor. It was dismissed in July.

THE COURT: But it was dismissed by the prosecutor.
MR. GLIHA: Dismissed upon motion of counsel for Mr. Chow, against Mr. Chow's request, as he wanted to clear his good name and that that was on the 9th day of July, 1993.

THE COURT: I think you've explained what your argument is. Thank you.

Do you need to say something else?

MR. GLIHA: No, I'm satisfied, your Honor.

THE COURT: The Court is going to grant the motion for summary disposition finding that the plaintiff cannot meet its burden of going forward on the elements, particularly the malice, that the testimony looked at in the light most favorable to the plaintiff does not give rise to circumstances that would lead a rational trier of fact to impute malice to the reporter.

As to the elements of termination in favor of the defendant, the Court would find that the termination in favor of the defendant, as a practical matter, did occur, and as a fact of the matter that there was not an adjudication on the merits may lead us to some other things, but the plaintiff did not meet its burden of going

[12]

forward on that element. The motion is granted. The case is dismissed.

MR. BLAKE: Thank you, your Honor.

[13]

STATE OF MICHIGAN)
)
)
COUNTY OF WAYNE)

I certify that this transcript, consisting of 12 pages, is a true, accurate are correct transcript of the proceedings and testimony held in the above-entitled cause on Friday, September 29, 1995.

(DATE) April 4, 1996

DONNA K. SHERMAN,
CSR# 2691
1719 City-County Building
Detroit, MI 48226
(313) 224-2451

APPENDIX B

Order/Judgment

Court of Appeals, State of Michigan

ORDER

Chi Ming Chow	)	Mark J. Cavanagh
	)	Presiding Judge
v	)	
	)	Martin M. Doctoroff
Van Buren Township	)	Donald A. Teeple
	)	Judges
	)	
	)	**Docket # 191046**
	)	**L.C. # 94-422740**
	)	

_____/

The Court orders that the motion for rehearing is **DENIED.**

A true copy entered and certified by Ella Williams, Chief Clerk. on
Date 9/30/1997
/s/_____
Ella Williams
Chief Clerk

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

Conrad L. Mallett, Jr.

110961(69)

CHI-MING CHOW Plaintiff-Appellant	)	
v.	)	**SC: 110961** **COA: 191046**
VAN BUREN TOWNSHIP Defendant,	)	**LC: 94-422740**
and	)	
K-MART CORPORATION and JILL FEHRENBACH, Defendants-Appellees.	)	

ORDER
September 28, 1998

On order of the Court, the motion for reconsideration of this Court's order of July 28, 1998, is considered, and it is **DENIED**, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and

complete copy of the order entered at the direction of the Court.

DATE: September 28, 1998

/s/_____

APPENDIX C

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHI-MING CHOW,
Plaintiff,

vs

VAN BUREN TOWNSHIP, K-MART COPORPORATION, JILL FEHRENBACH, FRED SWEET, MATTHEW CURTIS, PHIL WAKEFORD, JEAN JOHNSON, and MARK PERKINS,
Jointly and Severally
Defendants.

Case No: 94-422740-NZ

Judge:Hon. Cynthia D. Stephens

JURY TRIAL DEMANDED
JURY FEE PAID

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F. Peter Blake (p26531)

EXHIBITS

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Matthew Curtis, Phil Wakeford,
Jean Johnson and Mark Perkins
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EXHIBITS SUPPLEMENTAL TO COMPLAINT

Plaintiff, CHI-MING CHOW, through his attorney, DAVID H. RAAFLAUB, presents that attached as exhibits supplemental to his complaint.

Dated: April 6, 1995.
/s/ _____
David H. Raaflaub

PROOF OF SERVICE

I certify I mailed a copy of Exhibits Supplemental to Complaint and Proof of Service to opposing counsels at their addresses above on April 6, 1995 by U.S. Mail first class postage.

April 6, 1195

/s/ _____
David H. Raaflaub

EXHIBITS

September 14, 1993 (Revised)

Chi-Ming Chow (Mr.)
2580 Holmes Road, No. 16
Ypsilanti, Michigan 48198

To Whom It May Concern:

My name is Chi-Ming Chow. I am a naturalized Chinese American citizen. I have retired from Oakland Community College since 1992 after serving more than 26 years as a charter mathematics faculty member.

I am writing this letter regarding Kmart and Van Buren Township attorney/prosecutor's false accusation, false arrest, defamation, malicious prosecution, conspiracy, perjury, wilful neglect of duty and malicious destruction of evidence to conceal crime and obstruct justice. The incident of this case occurred on August 12, 1989. After I won two appeals, the false charge of this case was finally dismissed on July 20, 1993. This case lasted for almost 4 years and cost me approximately $60,000 attorney fees. My life and reputation was ruined. All these unusual criminal acts can also happen to other people. This is why my attorney and I have decided to open this case to the public. It can be a useful reference and may offer some extra protection for all people of our community.

My case is actually a very simple case. The reason that it lasted for almost four years is because two conspiracies were involved. They were essentially confirmed and recorded on our court document.

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The first conspiracy is that the real criminals abused our jury system. They used perjury and false evidence to mix with the true evidence to either confuse the jury or give the prejudiced jury a good excuse to convict an innocent Chinese American.

The second conspiracy is that after the first conspiracy was revealed in the appeals court, and the verdict was reversed and a new trial was ordered by the court, the real criminals defied court order and maliciously destroyed the true physical evidence to cover up and conceal their criminal act.

In order to let you understand my case better, it is necessary for me to make a brief statement of my case as follows:

To begin with, in 1989, I bought a plane ticket (flight ID 90832) for an European trip. The departure date for this flight was August 23, 1989. I decided to wear a pair of new shoes for this trip. In order to feel comfortable with my new shoes on this trip, I decided to wear them a few weeks earlier. I started to wear them on about August 7, 1989. (I always keep 5 or 6 pair of new shoes at home. In recent years, most of my shoes were bought from Kmart because of its reasonable price.) (Please see attached copy of Exhibit 1-1.)

On August 12, 1989 (Saturday), at about 9:15 p.m., I went to shopping at Kmart in Van Buren Township which was about 10 minute drive from my home. At about 9:30 p.m., I was at Kmart's footwear department. At that time, I heard a Kmart saleswoman saying the word , "teacher", in a disrespectful manner. I looked at her, but did not pay too much attention to her. I purchased two pair of new shoes because they fit me better . Those shoes were the last items I bought from Kmart

EXHIBITS

on that day. I then walked to the checkout counter. After I paid for my merchandise, I was arrested by Kmart's security person, Fred Sweet, just outside of the Kmart's entrance door for not paying for my one-week shoes on my feet. (After this incident, I learned that this false accusation was made by Kmart's saleswoman, Jill Fehrenbach. I then checked with my school, Oakland Community College, and found out that she was a student at O.C.C. in 1986 and 1987 on the same campus where I taught. Later, at the trial, I also saw that Jill Fehrenbach was the same saleswoman who said the word, "teacher", when I was at the Kmart's footwear department on August 12, 1989.)

On the day of the incident, Fehrenbach apparently noticed that the shoes on my feet looked like new and thought she could frame me (I remember that she was never nearby me and had no chance to take a close look at the surface and bottom of my shoes.) So she called Fred Sweet, a Kmart security person, and made her false accusation. Sweet then arrested me outside of the door of Kmart about 15 minutes before the store was closed at 10:00 p.m.. After I was arrested, I immediately told Sweet that my shoes were one week old and also showed him the worn off signs on my shoes. He would not listen. I refused to sign any paper for my release. I told him to call the police. When two Van Buren Township policemen arrived, I again told them that my shoes were one week old and showed them the worn off signs, wrinkles , and dirt on my shoes. However, they arrested me again in spite of the condition of my shoes and my explanation. I was released after I paid my $100.00 bond in cash immediately after their request.

Right after the incident, Fehrenbach , Kmart's eye witness,

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wrote her incident report, a false accusation, as follows:

> I, Jill A. Fehrenbach witnessed Mr. Chiming Chow tried on a pair of workshoes sold in the the Footwear Dept. Then he walked out of the Dept. with the new shoes still on his feet. He left his old shoes in dept. on the shelf where the shoes he took are located. Mr. Chow then walked toward the front checkout with the new shoes still on. (Please see attached copy of Exhibit 2-1.)

Sweet wrote in his report as follows:

> I first got the call from Footwear above subject came into the Footwear Dept. and tried on two pair of work boots then placed them his feet, then tried on a third pair and left them on his feet and proceed to walk out of store. Failing to pay for merchandise on his feet. Subject did pay for two other pair of boots and some sandwich bags. Subject was turned over to police authorities. (Please see attached copies of Exhibit 2-2 and 2-3.)

I believe that when Sweet was writing his incident report, he had not been involved in any conspiracy. This. was why he simply reported what he was told by Fehrenbach, what he saw and did in his incident report truthfully.

In this incident, Fehrenbach and Sweet were the accusers. They wrote their reports under no pressure whatsoever on the same day right after the incident of August 12, 1989 while

EXHIBITS

their memories were fresh. The writing spaces of their reports were unlimited and they could write anything as they liked. By law, their signed incident reports to law enforcement office may also be under oaths. Therefore they must be responsible for their false accusation. It was fortunate for me that they wrote their reports separately immediately after the incident of August 12, 1989 before they had a chance to meet Van Buren Township attorney/prosecutor, Mr. Matthew G. Curtis. This was why although Jill Fehrenbach made her false accusation, Fred Sweet wrote his incident report truthfully.

Certainly, I know I am innocent in this incident. I told my attorney, Mr. Stelmach, to request Kmart to produce any motion pictures or video tape recording which might prove my innocence. Kmart produced none. I feared that Kmart and Van Buren Township could switch my one-week old shoes with a pair of new shoes. So on October 24, 1989, I voluntarily had my finger prints taken at Van Buren Police Department so that if they switched the shoes, they could not get my finger print on their new shoes. I also requested to identify my finger prints on Kmart's old shoes alleged by Kmart as the shoes I left on its shoe shelf. Later on 01-24-90, the State Police Laboratory reported in writing that they found no identifiable finger print of mine on Kmart's old shoes. (Please see attached copy of Exhibit 3.) Also on November 1, 1989, my attorney, Mr. Stelmach and I went to Van Buren Police Department and took pictures of my shoes and Kmart's shoes. (Please see attached two sets of photo copies.) These photos show that on my one-week old shoes, there were clear worn off signs on the heels. There are also wrinkles, mud, pieces of grass, and rain drop splashes on my one-week old shoes. It would be impossible for any one to change a pair of brand news shoes into the condition of my one-week old shoes

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by walking from the shoe shelf toward the front checkout on Kmart's polished floor as stated in Kmart Jill Fehrenbach's incident report. By all the facts, Kmart's false accusation was only based on its false witness reports . Kmart had no physical evidence to support their accusation. On the contrary, all the existing physical evidences have actually proved Kmart's false accusation of an innocent citizen.

After Prosecutor Matthew Curtis saw Kmart's two signed under oath reports, finger print test report, and the condition of my one-week old shoes, he knew it was a false accusation case. On November 21, 1989 at a pre-trial conference, Mr. Curtis told my attorney, Mr. Stelmach, and myself that the shoes (my one-week old shoes) looked bad and that he might consider dismissing the charge. This fact is confirmed by Mr. Stelmach's letter of July 24, 1992 to me. (Please see Exhibit 4.) Also before the trial, on May 1, 1990, Mr. Curtis called my attorneys, Mr. Stelmach and Mr. O'Keefe, and offered to dismiss the case if I would sign and waive all claims and civil liability against Van Buren Township and Kmart. Prosecutor Curtis admitted such dismissal offer on page 4 of the Transcript of his reply brief of June 12, 1991. (Please see attached copy of Exhibit 5.) Attorney O'Keefe's phone recorded message confirmed such unfair offer. Attorney Stelmach's letter of November 12, 1991 also confirmed such unfair offer. (Please see attached copy of Exhibit 6.)

I refused to accept this unfair and unjust offer as this incident has ruined my reputation and devastated my life. The real criminals who made false accusations to harm an innocent citizen should be punished by our law.

On May 4, 1990, Attorney O'Keefe and I went to Kmart. We

found that the distance between the shoe shelf and the front checkout was approximate 75 steps which took about 1 minute to walk through. We then went to Van Buren Police Department and video taped the shoe evidences. (Attorney Stelmach did not go.) On the same day, I wrote a letter to Attorney O'Keefe and asked him to request the court to permit a live experimental demonstration in front of the jury at the scene of Kmart. (MCR 6.414, D allows such experiment.) We would ask some one to wear a pair of new shoes and walk from the shoe shelf toward the front checkout as stated in Kmart's incident report. We would then compare this pair of new shoes and my one-week old shoes worn on the day of the incident of August 12, 1989. (Please see attached copy of Exhibit 7.) On May 8, 1990, Attorney O'Keefe sent a letter with such request to the 34th District Court. (Please see attached copy of Exhibit 8.) This alive demonstration could immediately prove my innocence. Our country has the best scientific and technical laboratory knowledge for investigating physical evidence. However, the physical evidences of my one week old shoes such as worn off signs, wrinkles, soil dirt, dust , small piece of grass and rain drop splashes are so clear and obvious that any normal person can see the difference between my one week old shoe and a pair of brand new shoes by their naked eyes. Thus, my case is not a case of which side should one believe because no one can deny the facts as stated above. The prosecutor and Kmart also knew these facts. This was why they created the following conspiracy to harm an innocent man so that they could avoid being sued for damages:

1. Before the trial, the prosecutor let Fred Sweet fabricate a pair of so-called 15-minute old shoes and another pair of so-called one-week old shoes. These false evidences

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were later admitted as evidences at the trial. This fabricated testimony is false and irrelevant because it contradicts both Fehrenbach's and Sweet's signed reports of August 12, 1989 that I walked from the shoe shelf toward the front checkout with the new shoes still on. A 75 step walk takes only about 1 minute. These fabricated testimony and false evidence should not have been permitted at the trial in the first place.

2. Before the trial, Prosecutor Curtis stipulated with my trial counsel, Mr. O'Keefe, to allow their false evidence to be used in the trial without his objection. This fact is confirmed on Page 29 of the transcript of Sentencing and Motion of July 17, 1990. (Please see attached copy of Exhibits 9.) Also please see trial Exhibits 9-1 and 9-2. I was never informed of such stipulation and did not see the false evidence before the trial. Any one who has common sense knows that their false evidence was created to harm the innocent defendant. The prosecutor actually talked my counsel into accepting their conspiracy so that the false evidence could replace my request for a scientific experimental demonstration in front of the jury at the scene of the Kmart. My attorney not only failed to object the false evidence which was part of the conspiracy, but also collaborated with the prosecutor and Kmart's conspiracy without my knowledge.

3. In order to be sure that their conspiracy would work, before the trial, the prosecutor also asked Hon. Judge Zaborowski to tell my trial counsel that there would be no experimental demonstration at Kmart because it was too late to do so after the store was closed at 10 p.m.. Attorney O'Keefe mentioned this fact to me just before the trial. However, I believe this was very unfair since a person's innocence is more important than the timing of the

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experimental demonstration. We are fighting crime 24 hours a day. I also believe that the timing of the experiment should not be used as an excuse to allow unlawful false evidence to be used in a trial. Using unlawful false evidence to harm an innocent citizen to avoid being sued for damage is a conspiracy and a crime.

4. During the trial of May 18, 1990, Kmart's Fehrenbach and Sweet were actually lying under oath in the court. For example, Fehrenbach testified that after I left the Footwear Department, she then called the security police. At the same time, Sweet testified that after he was called by Fehrenbach, he saw that I was still in the Footwear Department. Honesty is the best policy. When they made up a story, there would be some holes which could not be matched up with each other. Also in the court, they falsely testified that I scuffed my shoe heels for about 10 to 15 minutes up and down around the store. They even lied that Sweet, the security police, followed behind me and saw me scuffing the heels of my shoes around the store and passing through different departments. These false testimonies were recorded on page 52 , page 59 and Page 84 of the trial transcript. (Please see attached copies of Exhibits 10, 11 and 12.) They limited the scuffing heels time to 15 minutes because they knew they wrote on their original incident report of August 12, 1989 that the incident occurred at about 9:45 p.m. and I was falsely arrested before the store was closed at 10:00 p.m.. However, again, they should know that honesty is the best policy. They were too smart to lie and make such false testimonies in court because they apparently forgot that on their own two original signed incident reports of August 12, 1989, they wrote that I walked from the shoe shelf toward the front checkout and proceeded out of the store. Failing to pay the merchandise on my feet. (Please

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again refer to Exhibit 2-1 and 2-2.) I would like to point out again that their reports were written right after the incident with their fresh memories under no pressure whatsoever. They both were well educated and trained Kmart employees and should have the abilities to distinguish between a 1 minute direct walk from the shoe shelf toward the front checkout and a 15 minute scuffing heels around the store followed by their own security police who was also an eye-witness himself. A 1 minute and 75 step walk from the shoe shelf toward the front checkout and a 15 minutes and thousands scuffing heels around the store are two completely different measures of times and descriptions of scenes. They simply can not replace each other. If any conscientious person still has doubt, we may even get 3 to 10 police officers not involved in my case and set up an experiment. We shall ask them to follow behind a person who scuffs his shoe heels around a store from department to department for 15 minutes and then proceeds out of the store. We shall then ask them to write their eye-witness incident reports. I can be sure that their reports will show that both Fehrenbach and Sweet were lying under oath in court. Further more, had Fehrenbach and Sweet actually seen I scuffed heels of my shoes around the store followed by Sweet for 15 minutes, they would have certainly written it down on their eye-witness incident reports of August 12, 1989 so that they could convict the criminal and avoid being sued for perjury and damages later. It was after they got together with Prosecutor Curtis and saw the condition of my one-week old shoes, they changed their original eye-witness statements and lied under oath to harm an innocent citizen. This is conspiracy and perjury. This fact has been recorded on the Exhibits of court document as I have stated before. They should be charged and punished for conspiracy and perjury by our law. It is clear that their perjury was an attempt to prevent

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civil liability.

5. During the trial, my trial counsel and the prosecutor never pointed out the fact that State Police Laboratory found no finger print of mine on the Kmart's old shoes claimed by Kmart as my old shoes left in Kmart. Thus the prosecutor did not present all the evidence as required by law.

6. When I saw Kmart's fabricated false shoe evidence in the trial, I reminded my trial counsel, Mr. O'Keefe, about my request for an experimental demonstration in front of the jury. He told me to shut up. As you know, at a trial, a defendant depends on his own counsel to defend him. So I did not talk back. This fact was confirmed in my letter of August 2, 1990 to Mr. O'Keefe and his reply letter of August 6, 1990 to me. (Please see attached copies of Exhibit 13 and Exhibit 14) After his innocent client was unjustly convicted, Mr. O'Keefe was smiling as if he won the case. From these facts and exhibits mentioned before, it is clear that my trial counsel actually collaborated with the prosecutor to carry out their conspiracy and allow them to use false evidence and perjury in the trial without his objection.

Conspiracy means that two or more persons make a plan to commit an unlawful act. The prosecutor and Kmart planned before the trial to use their false evidence to replace my scientific experimental demonstration in front of jury so that they could avoid being sued for damages. Their planned unlawful act is clearly an undeniable conspiracy to obstruct justice.

The result of their conspiracy was that during the trial, there were 6 pair of shoes on the table which was located in the

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center of the court room. (One pair of Kmart's old shoes, one pair of my one-week old shoes, one pair of my new shoes purchased on August 12, 1989, two pair of Kmart's false evidence shoes, and one pair of Attorney Stelmach's new shoes added by Attorney O'Keefe.) (Please see attached copies of photos.) The true physical evidences and false exhibits were all mixed up together without my trial counsel's objection. The jury sat far away from the shoe table. Jury members never took a close look at each pair of those 6 pair of shoes during the trial. My trial counsel knowingly failed to point out the difference between my one-week old shoes and brand new shoes to the jury. When the jury deliberated, they took those 6 pair of shoes with them into the jury room. Among the 6 pair of shoes, 5 pairs are of the same brand and look alike. (Please see attached photo copies.) I asked Prosecutor Curtis that how could the jury know the character of each of those shoes. He told me that if they had question, they would ask. The jury members (5 European Americans and one African American) were laughing all the time in the jury room as if they had a good time. It is clear that Kmart's false testimonies and false evidences either confused the jury or gave the prejudiced jury a good excuse to convict an innocent Chinese American who has never violated the law. I was falsely and unjustly convicted by this jury in about one half hour.

On the sentencing day, July 17, 1990, I told the Judge bluntly that Kmart made false accusation and used false evidence to replace my request for a live demonstration in front of the jury. That was how Prosecutor Curtis revealed that before the trial, he stipulated with my trial counsel to allow the false evidence to be used in trial without my trial counsel's objection. (A conspiracy.) (Please again refer to Exhibit 9.)

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When I told the Judge that I wanted to appeal. Judge said that he had to fine me first so that I could appeal. Because of my appeal, he then changed to pay $150.00 bond. I paid $150.00 bond in cash right after the sentencing.

8. Attorney Sylvia Delin represented me for my appeal. She brought all the physical evidences to the Wayne County Circuit Appeals Court and simply pointed out that Kmart's false evidence contradicted with their own two original signed incident reports of August 12 1989, and that the prosecutor stipulated with the defendant's counsel before the trial to allow Kmart's false evidence to be used in the trial without the counsel's objection. She also pointed out that the unfair conviction was prejudiced. On February 1, 1991, after reviewing all the physical evidences and arguments, Hon. Judge Marianne O. Battani reversed the unjust conviction and ordered a new trial for my case because I did not have a fair trial due to ineffective assistance of counsel. Her Honor's judgment of ineffective assistance of counsel was based on her Honor's observation on the physical evidence.

Hon. Judge Battani made the following comments regarding the physical evidence in my appeal transcript of February 1, 1991:

1). Kmart self-made evidence used in the trial contradicts with their own reports written before the trial. Contrary statements made by the prime witnesses against the defendant appeared to contradict the testimony at trial.

2). There are clear obvious worn off signs and dirt from outside of the store on Defendant's shoes. The burden of the contrary statement is beyond a reasonable doubt. (My

EXHIBITS

comment: This means that the verdict was not beyond a reasonable doubt.)

3). It was absurd that the defendant's counsel allowed Kmart to use its contradictory evidence in the trial without his objection.

It is clear that Hon. Judge Battani's order for a new trial was actually based on her Honor's viewing of the physical evidence. Her statement and comments were recorded on Pages 21, 22 and 23 of the transcript of my appeal dated February 1, 1991. (Please see attached copies of Exhibits 15-1, 15-2 and 15-3.)

I would also like to mention that in my appeal, we pointed out ineffective assistance of counsel and verdict against the great weight of evidence. Hon. Judge Battani commented: ". . . I don't find the verdict against the great weight of the evidence, if that be a standard, which I'm not sure in criminal cases it is a standard, but I don't think it makes any difference because I find ineffective assistance of counsel." (Please see Exhibit 15-2 and 15-3.) This statement shows that Her Honor does not even try to find the great weight of evidence because her Honor is so sure that ineffective assistance of counsel alone is sufficient to order for a new trial. Her Honor never states that there is no great weight of evidence.

In her Honor's order of February 22, 1991 for a new trial, her Honor also pointed out Kmart's inadmissible contradictory evidence. (Please see attached copies of Exhibits 16-1 and 16-2.)

On April 19, 1991, with Hon. Judge Battani's permission, in

EXHIBITS

her Honor's jury room attended by Van Buren prosecution official, Mr. Otis, my attorney, Mr. Stelmach, I video tape recorded all the physical evidence used in my case. After the recording, all the physical evidences were sealed in an evidence box by me. This box was then dated and signed by Van Buren Township's prosecution official, Mr. Toth, my attorney, Mr. Stelmach and myself. Mr. Otis then signed a receipt to acknowledge his receiving of the evidence box from Hon. Judge Battani. (Please see attached Exhibit 17.) Mr. Otis was ordered by Hon. Judge Battani to take the evidence box back to Van Buren Police Department and keep it for the new trial.

Prosecutor Curtis obviously knew that he could not use his well known conspiracy again in a new trial. So he tried to get some racially motivated unfair sympathy from my attorneys. The fact is that three of my previous attorneys, Mr. Stelmach, Ms. Delin and Mr. Mullkoff, all told me that Mr. Curtis had told them that he was going to be out of my case. The result was that Mr. Curtis filed his frivolous application for leave to appeal at Michigan Court Of Appeals in March of 1991 without my attorney's response brief. This application for leave to appeal was granted by the court on May 24, 1991. My attorney knowingly missed the limited responding date to stop the prosecutor's appeal even after my repeated inquiries. Justice was clearly obstructed and delayed by the prosecutor's frivolous appeal.

My attorney, Mr. Ziem, then filed an Amended Supplemental Brief on December 20, 1991 in response to the prosecutor's frivolous appeal.

On March 31, 1992, the State Court of Appeals ordered to

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compel prosecutor to produce exhibit. (Please see attached Exhibit 18.)

On May 1, 1992, my attorney, Mr. Ziem, represented me and filed a complaint at Wayne County Prosecutors Office regarding Kmart and Van Buren Prosecutor's malicious false accusation, false arrest, malicious prosecution, conspiracy and perjury. Wayne County Deputy Chief Prosecutor, Mr. Howard L. Philippart, then made an appointment for us to view and examine our physical evidences at Van Buren Police Department on September 28, 1992. On September 15, 1992, Attorney Ziem called me and stated that Deputy Chief Prosecutor Philippart informed him that Van Buren Police Department had lost the evidence box containing all of our physical evidences. Mr. Philippart made his affidavit regarding this new development on September 29, 1992. (Please see attached Exhibits 19-1 and 19-2.)

From the beginning, I told my attorneys that my one-week old shoes were my witnesses and the best evidence to prove my innocence. After the incident of August 12, 1989, my one-week old shoes (witnesses) were held in the real criminal's hand. I have long anticipated that they could be destroyed by the criminals any time. This is why I have tried my best to protect them from being harmed by taking their pictures and video recording them. Now my worry about a disastrous ending has become real. The criminals finally maliciously and deliberately destroyed my best witnesses to prove my innocence.

Fortunately, my witnesses can not be silenced. Their physical appearances can speak for themselves. The following two sets of photo copies and three sound video tapes presently exist:

EXHIBITS

1. On November 1, 1989, my attorney , Mr. Stelmach, and I went to Van Buren Police Department and took pictures of my shoe evidences. (Please again see attached two sets of photo copies.)

2. Before the trial of May 18, 1990, my attorney, Mr. O'Keefe, and I went to Van Buren Township Police Department on May 4, 1990 and video recorded my one-week old shoes and Kmart's old shoes. A police officer was also at the scene of taping.

3. After the trial of May 18, 1990, my attorney, Ms. Dagher-Margosian, and I went to 34th District Court on July 3, 1990 and video recorded all the evidences including Kmart's old shoes (People's Court Exhibit 1), my one-week old shoes (People's Court Exhibit 2), Stelmach's new shoes (People's Court Exhibit 3), Kmart's original incident report (People's Court Exhibit 14), Kmart's Two pair of fabricated shoes (People's Court Exhibits 15 and 17) and my new shoes with attached purchase receipt of August 12, 1989, the date of the incident. (People's Court Exhibit 16).

4. After my appeal hearing of February 1, 1991, my attorney, Mr. Stelmach, and I went to Hon. Judge Battani's Court on April 19, 1991 and again video recorded all the evidences, as stated above, with the presence of Van Buren Prosecution official Otis. After the recording, all the 7 exhibits were sealed in a 2 ft by 1.5 ft by 1 ft (approximate) evidence box and signed by Mr. Stelmach, Mr. Otis and myself. Mr. Otis then wrote and signed a receipt of the evidence box for Hon. Judge Battani. (Please again see attached Exhibit 17.) That was the last time I saw my one-week old shoes. I do not know what has really happened to

EXHIBITS

the evidence box after Mr. Otis took it away from Hon. Judge Battani's court room.

On October 13, 1992, Van Buren Police Director, Mr. Mark Perkins, sent a letter to Prosecutor Curtis and stated that the evidence box of this case was improperly disposed and auctioned on August 29, 1992 (One month before Deputy Prosecutor's request to review the evidence.) by Ms. Jean Johnson, a civilian clerk. (On September 14, 1993, Ypsilanti Press showed a picture of Jean Johnson, a middle aged police officer. Picture is shown in Exhibit 19-5.) Ms. Johnson also made a statement dated 09/29/92 regarding the auction of the evidence of VBPD Case# 41-035-89. (Please see attached Exhibits 19-3, 19-4 and 19.5.) (Please also note: My case number in 34th District Court is C894032, in Wayne County Circuit Appeals Court is 90-019210-AR and in Michigan Court Of appeals is 138761.) Based on their statements, we have the following facts:

1. It is unbelievable that VBPD Director could give approval to auction an evidence box based only on Ms. Johnson's so-call gentleman message which had no name, no date or recording. (It is known that police phone calls usually are recorded.) Also it may be a perjury if VBPD Director knowingly tells the court that Ms. Johnson is a civilian clerk when she is actually a police officer.

2. Prosecution Official Otis was ordered by Hon. Judge Battani to deliver the evidence box to VBPD on April 19, 1991. This date was after Ms. Johnson received her so-called gentleman's phone call. If he indeed delivered the evidence box to VBPD, he had the duty to tell BVPD that this case was not over and evidence box should be kept for future new trial

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use. He would certainly inform VBPD that the evidence box was sealed and signed by 3 eye-witnesses. It should not be opened without the presences of the three eye-witnesses, to prevent any tampering of the evidence.

3. VBPD has the duty to train its employees how to guard and handle the evidence box. It is also known that each evidence box or bag in the evidence locker room is well marked and tagged. (Please notice that there is marked tag on each evidence bag as shown in my photo copies.)

4. Michigan Court Of Appeals ordered the prosecutor to produce the evidence on March 31, 1992. This order was 5 month ahead of the VBPD's auction in August of 1992. The prosecutor had the duty to inform VBPD and would make sure to let VBPD be aware of the court order to produce the evidence.

5. It is known that there are certain procedures to auction. VBPD should return the properties to the known owners before it carried out its auction. However, VBPD did not do so.

Based on all the above-mentioned facts, it would be illogical and unbelievable that VBPD could auction a well known, marked, sealed and signed big 2' x 1.5 'x 1' evidence box to some one without a confirmed court order. Their so-called auction based only on an unconfirmed phone message is simply an alibi. It is clear that they used Ms. Johnson as their scapegoat. The Van Buren prosecutor and VBPD knew that they could not use their well known old conspiracy again in Michigan Court Of Appeal or in a new trial. This was why they deliberately defied the court orders, wilfully neglected

EXHIBITS

their duties and maliciously destroyed the physical evidence to cover up their criminal act. This is a new conspiracy.

On February 17, 1993, the hearing for the prosecutor's appeal was held in Michigan court Of Appeals by three Hon. Judges, Maura D. Corriage, John H. Shepherd, and Gary R. McDonald. On June 1, 1993, three Honorable Judges issued their unanimous decision to deny the prosecutor's appeal and remand this case back to 34th District Court with the following statement: (Please see attached Exhibits 20-1, 20-2 and 20-3.)

1. Ineffective assistance of counsel. We agree with the court below that counsel's decision to forgo objection (inadmissible evidence) was a significant omission which prejudiced defendant.

2. Defense counsel also failed to pursue issues relating to the weight of the evidence. This omission also deprived defendant of a fair trial.

3. Defendant counsel failed to cross-examine about the test condition of the evidence.

4. Defense counsel also completely failed to attempt to impeach the store security guard with an incident report he had prepared. The guard testified at trial that he had seen defendant scuffing the heels of the stolen shoes while he walked around the store. However, he omitted any mention of this unusual behavior in his contemporaneously filed incident report.

5. Defense counsel also failed to pursue the store clerk's

acknowledgment that she attended Oakland Community College. Defendant served on the faculty of that institute. Defense counsel thus neglected the issue of possible witness bias in a case where credibility was crucial. Counsel's failure to explore credibility was also significantly prejudicial.

(Please notice that this court decision was originally printed on pink paper with a cover letter which states: Under MCR 7.215 (A), Opinions not designated for publication at the time of release are printed on pink paper. (Please see Exhibit 20-0.) At the end of page 2, it states:

> The issues relating to alleged prosecutorial misconduct raised in defendant's supplemental brief were not argued before the court below and thus are not properly before us.

Indeed, when this case was in lower court, Wayne County Appeals Court, all physical evidences still existed, and the unlawful auction and conspiracy to cover up the crime had not occurred yet. Therefore, it is not proper for this higher court to make comment on these issues. In order to avoid a precedent in a publication, this court paper was unpublished and it omitted the conspiracy and destruction of evidence without explanation.)

On July 20, 1993, Attorney Joseph H. Wagner represented me at the new pre-trial. Hon. Judge Zaborowski dismissed the charge of this case without a trial for lack of evidence. (Please see attached Exhibit 21.) His Honor also answered my inquiry that His Honor gave no restriction for me to file civil or criminal law suit.

EXHIBITS

Two sets of photo copies are attached to this letter. These photo copies are also on files of the Van Buren Township Prosecution Office, 34th District Court, Wayne County Circuit Appeals Court and the Michigan Court Of Appeals before the physical evidence being maliciously destroyed. Two set of video tapes have been verified and kept by the prosecutor and Michigan Court Of Appeals. They are available for your review. Please notice that in the video tape, People's Court Exhibit 2 are my one-week old shoes. This exhibit number was recorded on Page 52 of the trial transcript of May 18, 1990. (Please see Exhibit 10.)

In conclusion, our National Constitution assures equal justice and equal protection of the laws for all citizens born or naturalized in the United States. Kmart and Van Buren Township prosecutor's false accusation, false arrest, perjury, and conspiracies, etc. violated my constitutional right and ruined my reputation and life. People usually believe that the duty of a prosecutor is to fight the crime and protect the innocent. In my case, Van Buren Township prosecutor did just the opposite. He was helping the real criminal to harm an innocent citizen so that they could avoid being punished for damage. Therefore, they did all their wrong doings knowingly and not by mistake. In my case, Kmart saleswoman, Jill Fehrenbach and Prosecutor Curtis totally disregard our law. They are the chief offenders. A lot of other people were also involved in criminal act because of their wrong doings. Now the charge of my case has finally been dismissed after 4 long years. Our justice really works if you do not give up hope and the confidence in our National Constitution. Furthermore, had I worn my new shoes for the first time on August 12, 1989 and gone to shopping at Kmart and then been falsely accused by Kmart, it would have been very difficult for me to prove

EXHIBITS

my innocence. I am extremely scared and upset whenever I think about this. This similar situation can also happen to other people. This is why my attorney and I think that we should open our case to the public to warn or caution all people about this potentially dangerous situation in our daily life. We should request that all stores must have absolute proof such as video tape recording to support their accusation. This requirement will certainly give all customers some extra protection. I sincerely hope that our law will teach Kmart and other stores a good lesson that honesty is the best policy. Harming an innocent citizen can be harmful to yourself.

Thank you for reviewing this letter.

Very truly yours,

/s/_____
Chi-Ming Chow

Foldouts of the following exhibits are attached:

Exhibit 1 (Receipts)
Exhbit 2-1 (Report of Fehrenbach)
Exhibit 2-2 (Report of Sweet)

RETAIN FOR REFUND

OUR K-MART NOW ACCEPTING
APPLICATIONS FOR EMPLOYMENT

1	417045468193	FOOTWEAR	17.83
2	417045468063	FOOTWEAR	17.83
3	014418300447	PADLOCK	2.17
4	072629747079	FOOD BAGS	1.47
5	072629667070	SANDWICH BAG	1.68
6	072629667070	SANDWICH BAG	1.65
		SUBTOTAL	42.64
		TAX	1.71
		TOTAL	44.37
		CASH TENDERED	50.00
		CHANGE	5.63

9932-9932 014 07 8/12/89 3153 9:28P

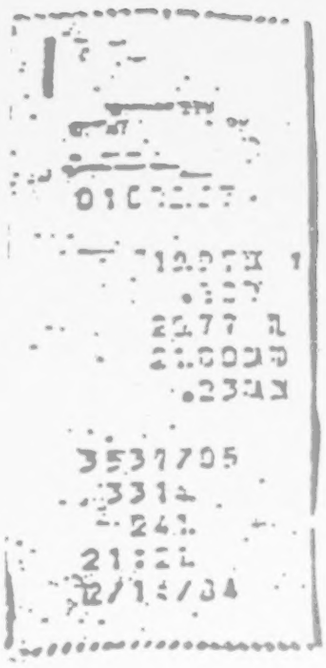

Exhibit
RETAIL OR REFUND
REG.SEA.NO.

01002679

19.97 XX 1
.80 XX
20.77 TL
21.00 CA TD
.23 CACH

3537705
8314.
241
21:21
12/14/84

1	0440310	CRACKERS	1.77 X
2	0340001975001	GIANT BAR	1.59 X
3	0340001040553	BAR HOME OFF	1.97 X
4	07518605634?7	CANDY.....	1.50 X
5	418070468379	FOOTWEAR	22.57
		SUBTOTAL	29.80
		TAX	.92
		TOTAL	30.72
		CASH TENDERED	40.00
		CHANGE	9.28

4445-4445 002 26 5/30/85 2207 3:33P

Exhibit 1

BEST AVAILABLE COPY

K mart CORPORATION
Loss Prevention Department

SPECIFIC OFFENSE: RETAIL FRAUD 2ND DEGREE

CASE:

STATEMENT FORM

STATEMENT OF	ADDRESS	PHONE	AGE AND DOB
JILL FEHRENBACK	2095 RAWSONVILLE Belleville MI	485-8510	21-01-17-6
CONNECTION W/CASE	**WHERE TAKEN**	**DATE AND TIME**	
WITNESS	SHOE DEPT.	8-13-89	1:00 PM

-> Jill A. Fehrenbach witnessed Mr. Chiming Chow Try on a pair of workshoes Sold in The Footwear Dept. Then he walked out of The dept. with the new shoes still on his feet. He left his old shoes in dept on the Shelf where the shoes he took are located. Mr Chow Then walked toward the Front checkout with the new shoes still on.

CASE OF CHOW, CHI Ming

WITNESS

The above statement is the truth to the best of my knowledge. I have made the above statement of my own free will and accord without any promise of immunity or reward and without any force or duress.

SIGNED: Jill A Fehrenbach
ADDRESS 823 Forest Rd #2
CITY Ypsilanti ZIP 48198
DATE 8-12-89 TIME 10:00

CODE 94-48-43—Pads-50—(Rev. 1/84)—K—Litho in U.S.A.

Exhibit 2-1

FRED SWEET
372-74-226
H-484-3697
W-485-8510

Kmart Corporation

Loss Prevention Department
Report of Apprehension

Print in Ink or Type

Store Number 31

Place of Apprehension (Exact Location): OUTSIDE VESTIBULE | Date: 8-12-88 | Day of Week: SATURDAY | Time: 10:00 ☐ AM ☐ PM

Subject's Last Name: CHOW | First Name: CHI MING | Middle Initial | Telephone No.: 484-02

Street Address: 41850 CAROUSEL DR P.O. BOX 903 | Date of Birth: 11-15-31 | Marital Status: SINGLE

General Description (Physical Characteristics - If Juvenile, Give School Attending) | Amt. of Money on Subject: $ | Subject Intox

Description of Merchandise Recovered	Number	Retail Value
1 PAIR WORK BOOTS	1	$ 22.97

CR Called or Fee Checked for Prevous Apprehension ☐ Yes ☐ No | Total Value of Merchandise Recovered ▶ | $ 22.97

Place Subject First Observed (Exact Location): FOOTWEAR | Time: 9:45 ☐ AM ☐ PM | By Whom (Name & Title): FRED SWEET L.P.M

Subject Apprehended By (Name & Title): FRED SWEET L.P.M | Incident Witnessed By: (Associate Cpy): Jill A. Fahrenbruch

Subject Interviewed By (Name & Title): FRED SWEET L.P.M | Place (Exact Location): L.P. OFFICE | Interview of Subject Witnessed By: Jill A. Fahrenbruch

Did Subject Sign - General Release Form ☐ YES ☐ NO | Other Written Admission? ☐ YES ☐ NO

Describe Incident in Detail (Use Reverse Side if Necessary): I FIRST GOT THE CALL FROM FOOTWEAR ABOVE SUBJECT CAME INTO THE FOOTWEAR DEPT AND TRIED ON TWO PAIR OF WORK BOOTS THEN PLACED THEM HIS FEET THEN TRIED ON A THIRD PAIR AND LEFT THEM ON HIS FEET AND PROCEEDED TO WALK OUT OF STORE FAILING TO PAY FOR MERCHANDISE ON HIS FEET. SUBJECT DID PAY FOR

I have read and understand the above and to the best of my knowledge it is true in every respect.

Signature of Person Apprehended

Action Taken | Name(s) of Parent(s) or Name(s) and Title of Officer(s) | Time released

☐ Released To Parents | ☒ Turned Over To Police Authority | ☐ AM ☐ PM

☐ Released - Not Arrested | ☐ Turned Over To Juvenile Authority | ☐ AM ☐ PM

Final Disposition of Mdse. Recovered | Department Returned To: | Name of Recipient | Date

Date Report Prepared | Signature | Title

If Subject Is Prosecuted, Complete This Section When Case Disposition Becomes Final

Arraignment Date	Time	Trial Date	Time	Subject's Plea
	☐ AM ☐ PM		☐ AM ☐ PM	☐ Guilty ☐ Not Guilty

Case Disposition ☐ Dismissed ☐ Acquitted ☐ Convicted ☐ Other _____

Penalty ☐ Fine: $ _____ ☐ Other _____

Exhibit 2-2

EXHIBITS

STATE OF MICHIGAN
JAMES J. BLANCHARD, GOVERNOR
DEPARTMENT OF STATE POLICE
714 SOUTH HARRISON ROAD
EAST LANSING, MICHIGAN 48823
COL R. T. DAVIS, DIRECTOR

FORENSIC SCIENCE DIVISION
NORTHVILLE LABORATORY
42145 WEST SEVEN MILE ROAD
NORTHVILLE, MICHIGAN 48167
PHONE: (313) 473-1000

Laboratory No.: 14276-89
Record No. : 13010
Received By : Mary E. Dempsey
Date Received : 11-07-89

Nature of Offense: Larceny

Victim: K-MART

Suspect: CHI MING CHOW, W/M. 11/15/31 (FP)

Evidence Received:

One K-Mart bag containing
1 - Pair of worn black shoes

Processing Results:

The evidence submitted was processed for latent prints

EXHIBITS

with no identifiable prints being obtained.

Remarks:

The submitted inked impressions will be returned to the
investigating agency.

/s/_____
Mary E. Dempsey
Specialist (Sgt.)

MED:tb
1/25/90
84

(Exhibit 3)

EXHIBITS

LAW OFFICES
STEVEN STELMACH, JR.
PROFESSIONAL CORPORATION
2970 EAST BIG BEAVER ROAD
TROY, MICHIGAN 48083

July 24, 1992

Professor Chi-Ming Chow
2580 Holmes
#16
Ypsilanti, MI 48198

Re: People of Van Buren Township vs. Chow

Dear Professor Chow:

Pursuant to your request during our telephone conversation on July 24. 1992, and after having you refresh my recollection to some degree, I believe I can state that on November 21, 1989 at a pre-trial conference in the above referenced matter, I had a talk with the City Attorney who had apparently seen the alleged stolen shoes which were the subject of the case and he commented that the shoes looked bad and that he might consider dismissing the charges but would not do so at that time, presumably because he had to investigate the matter further.

That is my recollection to the best of my ability, however, please keep in mind that I had just come in from Court when you called me on the phone and asked me to recall what occurred almost three years ago and I have not had an opportunity to dig into your enormous file to try to verify the information you gave me to refresh my recollection.

EXHIBITS

I have not spoken with you in some time despite my requests that you keep me informed of everything that is happening. You have still not told me who your appellate attorney is and I believe I might be helpful to him, however, you have indicated that you do not want him to discuss anything with me because he is young and unstable and it might change his mind about the apparent approach he is currently taking. That is what I understood you to say when you called me back on July 24, 1992 for the second time while I was dictating this letter.

In any event, if this letter does not suit your needs, please have your attorney contact me to indicate what other format he may wish it to be presented.

/s/_____
Steven Stelmach, Jr.

(Exhibit 4)

* * *

evidence.

10. Trial counsel's stipulation to allow other pairs of shoes into evidence as exhibits was a strategic decision on the part of triml counsel who believed that the other exhibits would demonstrate to the jury that the subject pair of shoes defendant was wearing when he attempted to leave K-Mart were old shoes rather than new shoes. Plaintiff-Appellant submits that this deliberate choice of trial strategy does not prove that defense counsel was incompetent, simply because the trial strategy was unsuccessful. It is on this point that plaintiff-appellant has appealed Judge Battani's ruling.

11. The prosecuting attorney's offer to drop charges occurred before trial and was not motivated by concern that defendant was "wrongfully accused" of stealing shoes but was an attempt to avoid costly litigation over an incident involving a twenty-five dollar pair of shoes. Such settlement offers are totally irrelevant and plaintiff-appellant strongly protests the violation of public policy by defendant-appellee in bringing this settlement offer to the attention of this Court. The fact remains that defendant rejected the Township's reasonable offer to avoid prosecution and took his chances with a jury trial where he was found guilty based upon the eyewitness testimony of two witnesses.

12. Defendant clearly could have avoided the risk of being found guilty by a jury of shoplifting had defendant accepted the prosecutor's generous conditional offer to drop charges, and thus have avoided disrupting the "peace and equilibrium of his life."

[4]

EXHIBITS

Professor Chi-Ming Chow
2580 Holmes Road
#16
Ypsilanti, MI 48198

Re: People vs. Chow

Dear Professor:

Pursuant to your request in your letter of November 8, 1991, please be advised that I do remember having the conversation with Mr. Curtis wherein he offered to dismiss the case if releases were signed waiving any and all claims against Van Buren Township and Kmart to the best of my recollection.

As you know, at that time, I had already been advised that attorney O'Keefe was involved and so I told Mr. Curtis that I could not entertain his offer because I was no longer representing you. I believe Mr. O'Keefe also knew of the offer of Mr. Curtis.

Also, I remember discussing the matter with you as well and you, of course, rejected the idea.

Please contact me upon receipt of this letter.

Very truly yours,

/s/_____
Steven Stelmach, Jr.

SS/11

(Exhibit 6)

EXHIBITS

May 4, 1990

Mr. Kurt O'Keefe, Attorney
2950 David Stott building
1150 Griswold
Detroit, Michigan 48226

Dear Mr. O'Keefe:

It seemed that your were always busy or in a hurry when I was talking to you. So I decide to write this letter.

First, I would like to inform you that today's video tape recording is good and useful. Now our evidences are solid and confirmed. The chance for the other side to switch the evidence has been minimized.

I know you are a good attorney. I hope you are also a humble person. If I say something which is useful for our case, I hope you would consider it.

As I have suggested before, maybe our next best thing to do is to get a court order and request Jill, Kmart's eye-witness, to demonstrate personally about her false accusation. That is to let her wear a pair of new shoes of the same brand as my old shoes, then walk from Kmart's shoe shelf toward the front check-out in any manner or way. We shall video tape record her walk and count the time and distance of her walk. We shall then compare the conditions of her shoes and my old shoes. There will be no way for her to-get all the worn-off signs, dirt, soil, grass, scratches, wrinkles, dust, rain drop or water splash traces, etc. on the surface, side, sole and heel of her shoes as of my old shoes. This request of her

demonstration is a must. Sooner or later we will have to make this request because only fact can stop their argument. Also it is better to get this result before the jury trial. Otherwise, we will have to stop in the middle of the trial to get this result. That will be an ineffective way to do and will only waste the court's time and people's money. The prosecutor should also know this. Thus, if it is necessary, we may have to delay the trial date in order to get this demonstration and result. Further more, the prosecutor may drop the case for lack of evidence after we get all the facts for this case.

This letter can be used as a reference for the prosecutor.

Your comment and consideration will be appreciated.

The trial date, May 18, 1990, is very close. Your prompt answer will also be appreciated.

Very truly yours,

/s/_____
Chi-Ming Chow
2580 Holmes Road, No. 16
Ypsilanti, Michigan 48198

(Exhibit 7)

EXHIBITS

WOODS AND O'KEEFE
ATTORNEYS &COUNSELORS AT LAW
2950 DAVID STOTT BUILDING
DETROIT, MICHIGAN 46226

May 8, 1990

34th District Court
Judge Szlinis
11131 Wayne Road
Romulus, MI 48174

Re: People vs Chow C 89 0432

Defendant proposes the following jury instructions:

All of Chapter 1, 2.1 through 2.13, inclusive, 2.16, 2.17, 2.22, 2.24, 2.25 and 2.26.

3.1, 3.2, Defendant reserves the right to submit a theory of the case instruction in conformance to the evidence presented at trial, 3.5, 3.6, 3.9, 3.11, 3.14, 3.15, and 3.17. Defendant reserves the right to ask for 3.3 if he does not testify on his own behalf.

4.7, Defendant is asking the prosecution to stipulate that a pair of new shoes, purchased by Defendant's prior attorney, be admitted into evidence as being new shoes from the same K-Mart store, in order to avoid having to call Mr. Stelmach as a witness, 4.8, 5.2, 5.11, and Defendant reserves the right to ask for 5.12 if the evidence at trial makes it appropriate, and 23.1.01.

Defendant serves notice that he will object to testimony

by any prosecution witness whose prior statement has not been furnished to him pursuant to this Court's discovery order. Defendant will ask the Court to allow the jury to view the scene at K-Mart, to show the impossibility of scuffing the heels of the shoes on the floor.

Sincerely yours,

/s/_____
Kurt O'Keefe

P.S. to Mr. Chow: I would like you to compile a list of all of your students of the fall 86 and winter 87 terms, so I can ask the prosecution witness if she knew any of them.

(Exhibit 8)

EXHIBITS

* * *

what happened was, there was a pair of shoes worn by the security officer, in which he went by scuffing his heels --

MR. CHOW: Yeah, and no one saw it --

MR. CURTIS: -- down the hallways. I presented and offered that into proof to indicate that he substantially -- he -- he imitated Mr. Chow, and went through the same halls. Defense attorney for Mr. Chow, the trial counsel, agreed to allow those shoes to be admitted into evidence, because in my conversations with him, he thought that those also helped his case, because he could show things on that shoe that showed that they were different than Mr. Chow's --

MR. CHOW: But nobody saw --

MR. CURTIS: - - so he stipulated to that - - to that exhibit, so he can't now come back and say, oh gee, that should have been - - shouldn't have been admitted, because it was a stipulated exhibit by - - by his own counsel.

MR. CHOW: That's against the weight of evidence. Because getting shoe in front of the jury, he made his own false evidence, and fooled the jury. The jury didn't see it. This was - - this - - means - - justice for - - for the innocent people. Now we let prosecutor use false evidence, false accusation to harm an innocent citizen, that's really injustice. I just say, if you want to admit any evidence, you must have scientific proof. But he - - he won't ask, how long did you wear. His opinions, but nobody

(p. 29 of Sentencing Motion of 7-17-90)
(Exhibit 9)

EXHIBITS

A. I then brought the bag to the police department the next - - the following day, which is this morning.

Q You then - - did that bag, and the shoes contained in the bag, stay in your possession?

A Yes, they did.

Q. And what did you then do once they were left at the police department, or once you brought them there, you kept them in your possession, what did you then do?

A I then brought those - - those shoes to the court house.

Q And that would be this morning?

A This morning, yes.

MR. CURTIS: Your Honor, I'd move to admit People's Exhibit Number Fifteen into evidence.

MR. O'KEEFE: No objection.

THE COURT: May be admitted into evidence.

(At 10:50 a.m. PX#15 admitted into evidence)

BY MR. CURTIS:

Q Taking a look, Mr. Sweet, as what's been marked in People's Exhibit Number Fifteen, do you note any wear on the heels?

A Yes, I do--

EXHIBITS

MR. O'KEEFE: Objection - -

MR. CURTIS: Thank you - -

MR. O'KEEFE: --again, the Exhibit speaks for itself, your Honor, the jury can certainly--

THE COURT: Sustained.

[p. -90- Trial of 5-18-90]

(Exhibit 9 - 1)

EXHIBITS

A. I was working both jobs, the wear and tear on the shoes was just from - - from all types of surfaces, common surfaces, anywhere from carpet to pavement.

Q. Okay. After you wore those shoes for seven days, what did you then do with them?

A. I then placed those in a - - in a bag and did not wear them - - them shoes anymore, they were kept off my feet.

Q. Okay. Were these shoes kept in your possession until court today?

A. That's correct.

MR. CURTIS: Your Honor, I would move to admit People's Exhibit Number Seventeen into evidence.

MR. O'KEEFE: No objection, your Honor.

THE COURT: May be admitted into evidence.

(At 11:46 a.m. PX#17 admitted into evidence)

MR. CURTIS: People rest, your Honor.

THE COURT: All right. Ready for arguments? Go ahead, you ready to go to arguments, we'll go right now.

MR. CURTIS: People are ready.

EXHIBITS

THE COURT: All right. You may step down.

(At 11:47 a.m. witness excused)

THE COURT: The Prosecution may proceed with arguments to the jury.

MR. CURTIS: Ladies and gentlemen this is now my

[p. -132- Trial of 5-18-90]

(Exhibit 9-2)

EXHIBITS

left the department.

Q. Are these the type of shoes, Ms. Fehrenbach, that are sold in a K-Mart Store?

A. Yes.

Q. Are these also the type of shoes that are sold at the rack where you first observed Mr. Chow going?

A. Yes.

Q. Now, when you first saw Mr. Chow walking or att - - or leaving the shoe department area with Exhibit Two shoes on, what did you then do?

A. I went over and called security.

Q. Before calling security, did you make any effort to find out if in fact, those were new or the old shoes?

A. No.

Q. Okay. You went and called security?

A. Hmm-hmm (affirmative response)

Q. Okay. Who would you have called?

A. Fred Sweet.

Q. Okay. And what did you inform Mr. Sweet of?

A. That there was a customer that had a new pair of shoes

EXHIBITS

on, and that his old shoes were in my department.

Q. You just indicated that your old - - that the old shoes were in your department; how do you know that?

A. Cause after Mr. Chow left the department I went back to the where - - wall, and I found 'em, the old shoes sitting on

[p. -52- Trial of 5-18-90]

(Exhibit 10)

EXHIBITS

Q.
- - him walking up to the center aisle?

A. Yes.

Q. What did if anything, did you observe Mr. Chow doing as he was walking?

A. He was still scuffing his heels - -

Q. Okay - -

A. - - as he was walking.

Q. And then after he proceeds up the center aisle, what if anything did you observe - - - or where did you observe Mr. Chow go then?

A. He went through the check-out lines.

Q. Now, approximately, how long after he left the shoe department store until he eventually proceeded to the check-out line was Mr. Chow walking around the store?

A. Ten, fifteen minutes.

Q. Okay. And when Mr. Chow then proceeded to the check-out line, did you observe this?

A. Yes, I did.

Q. Okay. Did you leave your department, or were you still at your shoe department at that time?

EXHIBITS

A. I went up to the center aisle of the store to straighten my depart - - the shoes in the midway, and then walked up to the Service Desk.

Q. Is the Service Desk located near - -

A. It's the - -

[p. - 59 - Trial of 5-18-90]

(Exhibit 11)

EXHIBITS

shoe department?

A. He went to the Home Center Department, the Home Center Patio area.

Q. Okay. And can you indicate for us what type of merchandise is located in that particular department?

A. There's several plants, there's also hardware supplies, soil, basic - - your lumber area.

Q. Do you recall the condition of the floor at that particular time?

A. Well, this was at closing time, so the floor was pretty well - - it was dirty.

Q. Okay. Did you observe Mr. Chow go into that department?

A. Yes, I did.

Q. Okay. Did you observe him leave that department?

A. Yes.

Q. And after leaving the Home Center Department, where did he then proceed to?

A. Proceeded to come - - almost make a circle and come back around by the Sporting Goods Department, come back through - - right across the footwear, around by the apparel section. Kind of made a U-turn through the whole store.

EXHIBITS

Q. And when you were making these observations of Mr. Chow, while you were following him, did you observe Mr. Chow scuffing his heels?

A. Yes, I did.

[p. - 84 - Trial of 5-18-90]

(Exhibit 12)

EXHIBITS

. MEMORANDUM

To: Attorney Kurt O'Keefe

From: Chi-Ming Chow /s/_____

Subject: My file of C894032 in your office

Date: August 2, 1990

1. I have been told by Attorney Stelmach that I have the right to have a complete file of my case from your of office.

2. I called you twice since last week to pack up my old file from your office. Each time you hung up on me several times and getting no result. So I now request that your send my complete file including Attorney Stelmach's foot wear receipt and my student lists and campus student news paper by certified mail to:

Attorney Kane Yee
First Federal building
33333 West 12 Mile Road, Suite 201
Farmington Hills, Michigan 48018

3. Before the trial of May 18, 1990, I believed that you had the intention to work on my case because you did go with me to video tape record those shoes at the palace department and took floor pictures at Kmart. However, on the trial day, after you made a deal with the prosecutor and Kmart employees without me just before the trial, you changed your attitude. You agreed with them to omit Kmart's demonstration in front of the jury at Kmart and my demonstration in front of the jury. During the trial I whispered the alive demonstrations to you

EXHIBITS

again, and you told me to shut up. The result was that you lost my case. I think it is time for you to shut up and dome thing good for my case to show your regret. (If you honestly deny that you ever used the words, shut up, to me, then I shall also withdraw this sentence. I use these words only if you used them to me before.)

4. Some attorney said that you made a bad deal with the prosecutor and Kmart employees. I consider that it was an unintelligent deal if you did not make it intentionally. If the jury's verdict was racially motivated, Kmart self-made and unconfirmed false evidences at least gave the jury an excuse to make such unjust and unfair verdict.

5. You mentioned the possible broken fertilizer bag at trial. Were you trying to help the other side to make the jury believe that the dirt and mud on my shoes were fertilizer? This was again an unintelligent statement if you did not say it intentionally.

6. Had we had Kmart's demonstration in front of the jury, then the jury could not have denied the fact that no one could changed a pair of new shoes into a pair of one-week old shoes by a few minute wearing.

7. I have always said that we shall have no regret if we have tried our best. Did you try your best to help me? I have suffered a lot because of this case.

cc: Attorney Yee and Attorney Stelmach.

(Exhibit 13)

EXHIBITS

WOODS AND O'KEEFE
ATTORNEYS & COUNSELORS AT LAW
2950 DAVID STOTT BUILDING
DETROIT, MICHIGAN 46226

August 6, 1990

Chi Ming Chow
2580 Holmes Road
No. 16
Ypsilanti, MI 48198

Dear Mr. Chow,

In response to your scurrilous letter of August 2, 1990, you twice made appointments to come to my office to pick up the file and failed to show.

You can pick up the file at my office, or send $20.00 for the estimated cost of mailing it to Mr. Yee.

I made no deal with the prosecutor and Kmart employees at any time.

I did tell you to shut up because it is impossible to try a case with your client yelling things into your ear.

I did nothing but my best for you, at and before the trial.

Sincerely yours,

/s/_____
Kurt O'Keefe
cc: Yee

(Exhibit 14)

EXHIBITS

The court is going to first address the ineffective assistance of counsel. And this Court finds that counsel must be at least adequate, at least this is what the standard I think is, what other attorneys would do. He is not held to a standard of expertise in the area, but that he would be adequate in the area of criminal law.

The court notes that in terms of the adequacy there are several issues that have come up. One is contrary statements by the prime witnesses against the defendant, the complaining witnesses, and those statements which appeared to contradict the testimony at trial were not gone into.

Second of all, there was an introduction, as I read the transcript, without objection. So though the other - - though Exhibit 17 was offered in rebuttal, Exhibit 15 was offered in the main part of the prosecution's case, and it came in without objection.

And the Court notes that, yes, it may e trial strategy that this attorney allowed these to go in, but if, in fact, this is trial strategy, it is the opinion of this Court that it is ineffective assistance of counsel. The shoes that were allowed in on Exhibit 15 are several sizes larger than the plaintiff's Exhibit 2. We don't know - - I don't know what the guard looked

[p. - 21]

(Exhibit 15-1)

EXHIBITS

like, because his height and weight is not indicated in the record.

In terms of the appellant, he is a very slight man. I know that not because it's indicated in the record, but because he is present today for the hearing. That the shoes show obvious wear on the bottom and obvious type of dirt that one ordinarily would find outside and it may be that it came from the garden center at the Kmart store and that may be plausible.

The problem is that there was this contrary statement that also wasn't gone into and the burden of proof here is beyond a reasonable doubt.

But given these two factors, one the shoes that were allowed into evidence, the rebuttal shoes that were worn a week that were allowed into evidence, this is just absurd to me that they would allow somebody to wear shoes for a week and then offer them into evidence and it be received without objection. I find that to be truly absurd.

And I, therefore, find it is ineffective assistance of counsel. I remand this to the District Court for another trial.

In terms of against the great weight of the evidence, let me rule on that. I don't find the verdict against the great weight of the evidence, if that be a

[p. - 22 -]

(Exhibit 15-2)

EXHIBITS

standard, which I'm not sure in criminal cases it is a standard, but I don't think it makes any difference because I find ineffective assistance of counsel.

MS. DELIN: Thank you, your Honor.

MR. TOTH: The case will be - -

THE COURT: You may have all of your shoes back right now. You can take them, the prosecution.

MR. TOTH: Well, can we secure them in the box and just hold onto them, because they're going to be - - and seal them:

THE COURT: All right.

(Hearing concluded)

[p. - 23 -]

(Exhibit 15-3)

EXHIBITS

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

PEOPLE OF VAN BUREN TOWNSHIP, Plaintiff/Appellee, v. CHI-MING CHOW, Defendant/Appellant.	Case No. 90-019210-AR HON. MARIANNE O. BATTANI

MATTHEW G. CURTIS (P37999)
Van Buren Township Attorney
Attorney for Plaintiff/Appellee
2000 Town Center
Suite 900
Southfield, MI 48075-1100
(313) 355-0300

SYLVIA K. DELIN (P39085)
Attorney for Defendant/Appellant
401 S. Woodward Avenue
Suite 450
Birmingham, Michigan 48009
(313) 647-4540

EXHIBITS

ORDER FOR NEW TRIAL

At a session of said Court, held in the City-County Building in the City of Detroit, Wayne County, Michigan, on February 22, 1991

PRESENT: MARIANNE O. BATTANI
CIRCUIT JUDGE

Upon appeal of Defendant, Briefs tendered by both parties, oral argument held before the Court, and the Court being apprised of the premises thereof;

IT IS HEREBY ORDERED AND ADJUDGED that the Judgment of the Lower Court be reversed due to ineffective assistance of defense counsel in failing to object to the introduction of inadmissible evidence, to-wit: Plaintiff's shoe exhibits numbers 15 and 17, and that this cause be and hereby is remanded to the 34th Judicial District Court for a new trial.

/s/_____
Marianna Battani
Circuit Judge

(Exhibit 16-2)

EXHIBITS

[HANDWRITTEN NOTE]

Received evidence box in case of People of Van Buren v. Chow, Case # 90-019210AR from Judge Mariann Battani

/s/_____
4-19-91

(Exhibit 17)

EXHIBITS

Court of Appeals, State of Michigan

ORDER

Maureen Pulte Reilly
Presiding Judge

People of Van Buren Twp v Chi-Ming Chow

Docket # 138761

L.C.# 90 019210 AR

The Court orders that the motion to compel prosecutor to produce an exhibit is GRANTED.

A true copy entered and certified by Ella Williams, Chief Clerk, on

March 31, 1992
Date

/s/_____
Ella Williams
Chief Clerk

(Exhibit 18)

EXHIBITS

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF VAN BUREN TOWNSHIP, Plaintiff/Appellant,	)	CoA No.: 138761
	)	Docket No.: 89-4032
	)	C.C. No.: 90-019-210-AR
v.	)	
CHI-MING CHOW, Defendant/Appellee.	)	

MATTHEW G. CURTIS (P37999)
Van Buren Township Attorney
Attorney for Plaintiff/Appellee
2000 Town Center
Suite 900
Southfield, MI 48075-1100
(313) 355-0300

WILLIAM E. ZIEM (P29097)
Attorney for Defendant/Appellee
990 Decker Road
Walled Lake, MI 48390
(313) 624-6330

AFFIDAVIT OF HOWARD L. PHILIPPART

I, HOWARD L. PHILIPPART, being duly sworn, depose and state as follows:

That I, Howard L. Philippart, am employed by the Wayne County Prosecutors Office. On September 25, 1992,

EXHIBITS

I made contact with the Van Buren Township Police Department regarding viewing physical evidence used in the case of People vs. Chi-Ming Chow, District Court Case No. 089-0432 in the '34th District Court for the County of Wayne. I was informed by Mr. Matthew Curtis, attorney for Appellant, that physical evidence in question is not available and that the exhibits were missing.

(Exhibit 19-1)

EXHIBITS

Further Deponent saith not.

/s/_____
HOWARD L. PHILIPPART

Subscribed and sworn to before
me this 29 day of September, 1992.

/s/_____
Notary Public
Okena County, Michigan, acting in Wayne
My Commission Expires: 1/25/95

(Exhibit 19-2)

EXHIBITS

CHARTER TOWNSHIP OF VAN BUREN
DEPARTMENT OF PUBLIC SAFETY

October 13, 1992

Matthew Curtis, Esq.
2000 Town Center
Suite 900
Southfield, MI 48075-1100

Dear Mr. Curtis:

As per our recent telephone conversation, an investigation was completed regarding the improper disposal of t. he evidence pertaining to the case of Chi-Ming Chow. After the trial in district court, the evidence was returned to the property room to be held pending any appeal. The evidence was then sent to circuit court for review during the appeal process. When the court made their decision, Jean Johnson, a civilian clerk who also controls the property room, received a call to recieve the shoes as they were no longer needed by the court.

Ms. Johnson was not aware that his matter was still pending and based on her conversation with the court believed the case to be closed. The evidence was disposed of during a department auction held on August 29, 1992.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,
/s/_____
Mark Perkins
Director

(Exhibit 19-3)

EXHIBITS

VAN BUREN TOWNSHIP CASE NO. 41-035-89

STATEMENT

NAME:

JEAN JOHNSON # 766

ADDRESS:

46425 Tyler Road, Belleville, MI 48111

DATE:

9/29/92

RE: CHOW, CHI-MING, *11-15-31-* SHOES

APPROXIMATELY TWO YEARS AGO, I RECEIVED A TELEPHONE CALL FROM CIRCUIT COURT, ADVISING ME TO PICK UP A BOX OF SHOES REGARDING VBPD CASE# 41-035-89. THE GENTLEMAN THAT I SPOKE WITH STATED THAT THE CASE WAS OVER AND THE SHOES NEEDED TO BE PICKED UP. THE SHOES WERE PLACES IN THE VAN BUREN TOWNSHIP POLICE PROPERTY ROOM AND REMAINED THERE UNTIL THIS AUGUST, 1992, AT WHICH TIME THEY WERE AUCTIONED OFF AT THE POLICE AUCTION.

I NEVER RECEIVED AN APPEALS LETTER REGARDING SAME.

WITNESS: /s/_____

Jean Johnson #766
SIGNATURE OF PERSON GIVING
VOLUNTARY STATEMENT
(Exhibit 19-4)

Foldout of the following exhibit is attached:
Exhibit 10-5 (news article showing officer Jean Johnson)

Focus ... Superior, Ypsi Twps.

John Mulcahy

Superior Township Treasurer Martha Kern triumphed in more ways than one with her violin performance at St. Luke's Episcopal Church concert of American music during this year's Ypsilanti Heritage Festival.

Kern played "Ashokan Farewell," better known as the theme song to the Public Broadcasting System production of "The Civil War." Kern was joined by Ypsilanti resident Ken Parks, who read the 1861 letter of Maj. Sullivan Ballou of the 2nd Rhode Island Volunteers to his wife, Sarah, written a few days before his death in the first battle of Bull Run. Ballou's letter also is in the PBS program.

"It was really a pretty good effort," said Kern, who

Police seek help indentify

By SARA COPPERNOLL
Press Staff Writer

VAN BUREN TWP. — Investigators are hoping someone may recognize the articles of clothing found on the skeletal remains of an unidentified body Friday in a wooded area near the northbound I-275 exit ramp on Ecorse Road.

The clothes are one way police are hoping to identify the partial skeleton found by a person searching for mushrooms at about 7:30 p.m. Friday in the woods.

The small-size "Sportique" brand black T-shirt with a silk screen of a rainbow and clouds has "Life begins where the rainbow ends" written on the front. The writing is white with a blue border, police said.

Because of the severe decomposition, police are unable to offer a description of the person, other than a white female about 5 feet tall.

"We're hoping to have an approximate age by tomorrow," Cpl. Gregory Laurain said Monday.

The cause of death has not been determined at this time.

Anyone with information is asked to call the Van Buren Po-

Van Buren Township police Officer Jean Johnson di... of a body found

BEST AVAILABLE COPY

EXHIBITS

STATE OF MICHIGAN
COURT OF APPEALS

LANSING

TO ATTORNEYS OF RECORD:

Enclosed with this letter is the decision and opinion in the entitled matter. We are releasing this opinion today.

Under MCR 7.215(A), no "per curiam" or "memorandum" opinions are published unless one of the judges of the panel deciding the case directs the reporter to do so. The words "For Publication" appear on the face of opinions of this type which are going to be published. Opinion not designated for publication at the time of release are printed on pink paper. Note that the official date of the filing of this opinion is the date stumped on it. Under MCR 7215(H), this opinion is the judgment of the Court of Appeals. All time periods for further action under the rules will run from the date stamped on the opinion. See MCR 7.215(H) and MCR 7.302(C)(2)(b).

I hereby certify that the annexed is a true and correct copy of the opinion filed in the record of the Court of Appeals in the entitled matter and that the date stamped thereon is the actual date of filing.

Sincerely,
Ella Williams
Chief Clerk

Encl.
cc: Trial Judge or Agency

EXHIBITS

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

PEOPLE OF VAN BUREN TOWNSHIP, Plaintiff/Appellant,	)	June 1, 993
	)	No. 138761
v.	)	
CHI-MING CHOW, Defendant/Appellee.	)	

Before: Corrigan, P.J., and Shepherd and McDonald, JJ.

PER CURIAM

Defendant was convicted after a jury trial in 34th district court of larceny under $100, in violation of Van Buren Township ordinance §603. He appealed as of right to the Wayne Circuit Court and won a new trial. The people appeal by leave granted. We affirm.

On the night of August 12, 1989, defendant went to a K mart in Van Buren Township to purchase shoes. A store employee observed defendant enter the shoe department wearing a very old pair of shoes and leave wearing new shoes from a rack she had recently restocked. She alerted a store security guard who observed defendant walking around the store for some ten or fifteen minutes. He seemed to be scuffing the heels of the shoes. Defendant paid for other merchandise in his shopping cart, including two pairs of shoes identical to

those he had allegedly put on. He did not pay for the shoes he was wearing. Defendant was arrested and charged with shoplifting. The K mart employee found a pair of old shoes, which she identified as those defendant had worn on entering the department, among the new shoes on the rack she had restocked earlier that evening.

At trial defendant essentially asserted that the shoes he was wearing on August 12 had been previously purchased and worn about one week. Seeking to rebut the defense, the prosecutor introduced two additional pairs of shoes identical to the stolen shoes. The store security guard wore one pair (Exhibit 15) for about ten minutes to duplicate the defendant's actions of walking around the store and scuffing the heels. The guard had worn the other pair of shoes (Exhibit 17) for approximately one week. Defendant's trial counsel failed to object to the admission of Exhibits 15 and 17 and failed to examine the store security guard about his experiment.

The circuit court granted relief, finding trial defense counsel ineffective because he failed to object to Exhibits 15 and 17 and failed to introduce other evidence favorable to defendant.

In resolving ineffective assistance claims, we follow Strickland v. Washington, 466 US 688, 104 S Ct 2052; 80 L Ed 2d 674 (1984);

> To establish a claim of ineffective assistance of counsel, the defendant must how that counsel's performance was deficient and that under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney guaranteed under the

EXHIBITS

> Sixth Amendment. Second, the deficiency must be prejudicial to the defendant. [People v. Tommolino, 187 Mich App 14, 17; 466 NW2d 315 (1991).]

See also e.g., People v. Butler, 193 Mich. App. 63, 66-67; 483 NW2d 430 (1992). Counsel "has a duty to bring to bear such skill and knowledge as will render the trial's reliable adversarial testing process." People v. Armendarez, 188 Mich. App. 61, 74; 468 NW2d 893 (1991), citing Strickland supra at 688.

[p. -2-]

(Exhibit 20-1)

EXHIBITS

Plaintiff initially argues that trial counsel's failure to object to the admission of boots worn by the security guard was not ineffective because the test boots would have been admissible in evidence. We disagree. The rules governing the admission of physical evidence require a proper evidentiary foundation. The articles must be identified as that which they purport to be and must be connected with the crime or with the accused. People v. Furman, 158 Mich App 302, 331; 404 NW2d 246 (1987). Because exhibits 15 and 17 had no connection with either the crime or the accused, they were not admissible as physical evidence. People v. Stapf, 155 Mich App 491, 496; 400 NW2d 656 (1986) (admission of gun to show that toy gun defendant had shown to victim looked like a real gun was error).

Plaintiff apparently introduced the shoes as evidence of an experiment. That is, the shoes seized from defendant were to be compared with the shoes worn by the guard for two stated lengths of time, under two different conditions (i.e., one pair worn briefly inside the store and the other worn extensively outside it). Experimental data are admissible if the tests from which the data are drawn involved conditions sufficiently similar to those involved in the particular case to assist the trier of fact in reaching its conclusions. Muniga v. General Motors Corp., 102 Mich App 755, 759; 302 NW2d 565 (1980), citing Smith v. Grange Mutual Fire Ins. Co. of Michigan, 234 Mich 119; 208 NW 145 (1926). The similarity need include only those circumstances or conditions which might conceivably have some influence in affecting the result in question. Jenkins v. Frison Building Maintenance Co., 166 Mich App 716, 719; 421 NW2d 275 (1988); quoting 1 Wigmore on Evidence, §442 (internal citations omitted). A reasonable or substantial similarity is sufficient. Id, quoting 22 CJ, p 759. See also, e.g., Osner v. Boughner, 180 Mich App 248, 260; 446 NW2d 873

EXHIBITS

(1989). Before test results can be admitted a foundation must be laid showing that the test in question properly duplicated the actual conditions. Duke v. American Olean Tile Co., 155 Mich App 555, 560; 400 NW2d 677 (1986). The burden is on the party presenting the evidence to prove that similar conditions exist. Id at 561.

The decision whether to admit evidence is left to the discretion of the trial court. People v. Taylor, 195 Mich App 57, 60; 489 NW2d 99 (1992). People v. Spearman, 195 Mich App 434, 445-446; 491 NW2d 606 (1992). This is not a case where an objection to the test pairs of shoes would have been futile. While the court might have ruled that the shoes should be admitted, it might well have ruled that they should not. We agree with the court below that counsel's decision to forego objection was a significant omission which prejudiced defendant.

Defense counsel also failed to pursue issues relating to the weight of the evidence; see, e.g., Jenkins, supra at 719 (lack of identity of conditions goes to weight of evidence). As the circuit court observed, the record does not establish whether the security guard was similar in height and weight to defendant. Because the relative condition of the new and the worn shoes was central to the defense, this omission also deprived defendant of a fair trial.

Plaintiff argues that counsel's decision was a matter of trial strategy. The defendant must overcome the presumption that the challenged action might be considered sound trial strategy. Tommolino, supra at 17. Allowing the shoes to be admitted might arguably have been a strategic decision, but failing to cross-examine about the test conditions (some of which had been brought out on direct examination) was not.

EXHIBITS

Defendant has overcome the presumption that counsel's action "might be considered sound trial strategy." Id (emphasis supplied)

Defense counsel also completely failed to attempt to impeach the store security guard with an incident report he had prepared. The guard testified at trial that he had seen defendant scuffing the heels of the stolen shoes while he walked around the store. However, he omitted any mention of this unusual behavior in his contemporaneously filed incident report. Counsel also failed to pursue the store clerk's acknowledgment that she attended Oakland Community College. Defendant served on the faculty of that institution. Defense counsel thus neglected the issue of possible witness bias in a case where credibility was crucial. Counsel's failure to explore credibility was also significantly prejudicial.

The issues relating to alleged prosecutorial misconduct raised in defendant's supplemental brief were not argued before the court below and thus are not properly before us. We see no evidence whatever of any conspiracies.

[p. -2-]

(Exhibit 20-2)

EXHIBITS

Affirmed. Case remanded to the 34th District Court. We do not retain jurisdiction.

/s/Maura D. Corrigan
/s/John H. Shepherd
/s/Gary R. McDonald

[1] All the trial exhibits, including defendant's own shoes, were sealed in an evidence box afar the trial and stored at the Van Buren Township Police Department in April 1991, Defendant videotaped all the evidence before it was stored. In October 1991, defendant flied a motion in this Court to have the court view the physical evidence at oral argument. That motion was denied, without prejudice to renewal in front of the panel to which the case was assigned. In March 1992, defendant filed a motion to compel the prosecutor to produce the exhibits. The motion was granted, but when an employee of plaintiff inquired at the police department on September , 1992, he was informed by plaintiff's counsel that the box could not be located.

An investigation determined that the box had been sent to the circuit court for its review in 1991. A civilian clerk who retrieved the box after the appeal was not aware that a retrial had been ordered and believed that the case was closed. Consequently, the evidence was disposed of in a departmental auction on August 29, 1992. Defendant subsequently moved to dismiss the appeal, but that motion was denied. Defendant then moved to have the panel view the videotape of the shoes at oral argument. That motion was also denied, but this Court did permit defendant to file portions of the tape. The Court has examined that tape in its review of the record. On the record before us, we find no evidence that the auction of the evidence was not in good faith.

[p. -3-] (Exhibit 20-3)

EXHIBITS

STATE OF MICHIGAN
IN THE 34TH DISTRICT COURT
FOR THE COUNTY OF WAYNE

THE PEOPLE OF VAN BUREN TOWNSHIP, Plaintiff,	) FILE NO. C894032)) Hon. Henry) Zaborowski
v.	)
CHI-MING CHOW, Defendant.	)

Thomas R. Bidrri P41618
Prosecuting Attorney
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Suite 900
Southfield, MI 48075-1100

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Attorney for Defendant
432 West Michigan Avenue
Ypsilanti, MI 48197
(313) 485-6767

ORDER DISMISSING

At a session of said Court held in the 34th District Court this, 29 day of July 1993.

PRESENT: Honorable Henry Zaborowski, District Court Judge

EXHIBITS

This matter having been brought on by motion of counsel for Defendant and the Court being fully advised in the premises; to-wit: the physical evidence having been disposed of;

NOW, THEREFORE;

IT IS HEREBY ORDERED AND ADJUDGED that the above entitled matter is hereby dismissed.

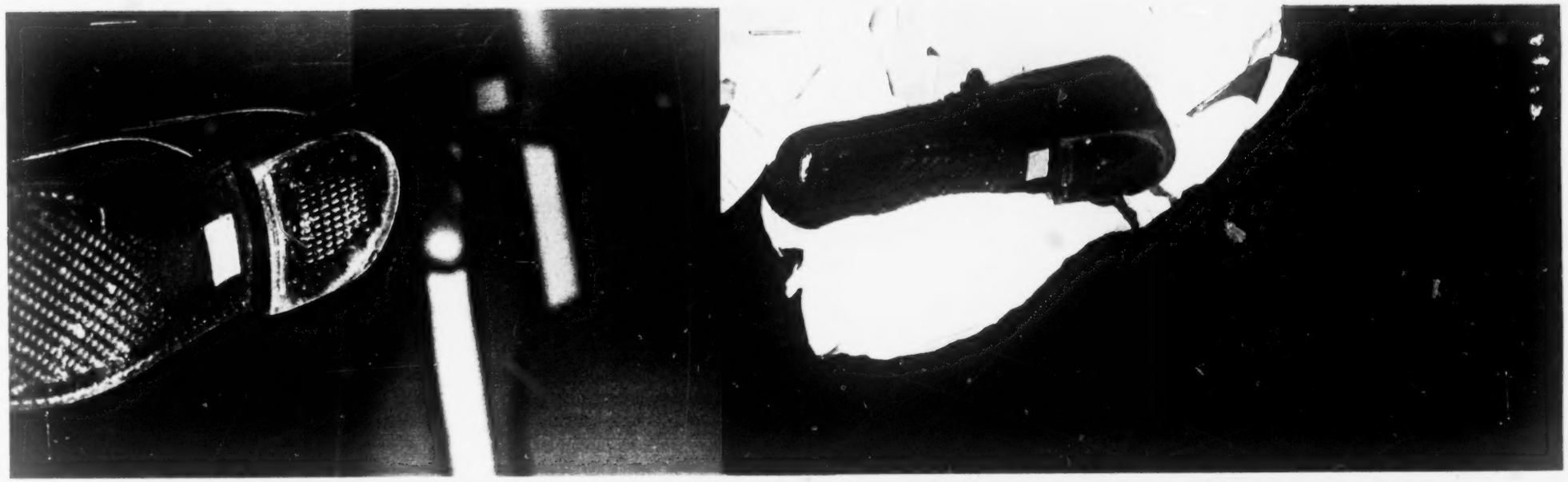
/s/_____
Hon. Henry Zaborowski
District Court Judge

A TRUE COPY
34TH DISTRICT COURT
BY /s/_____
Staci L. Brooks, Clerk

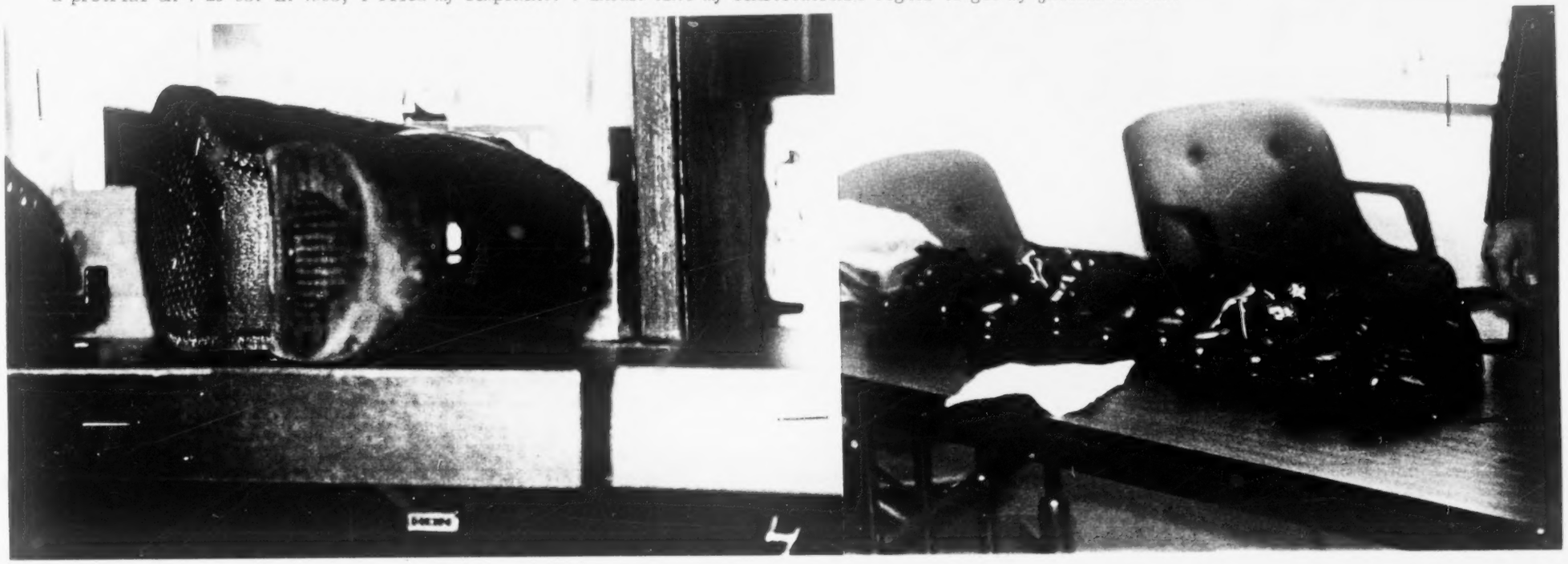
(Exhibit 21)

EXHIBITS

Photo



Pictures are court verified. Court verified video taped physical evidences , eye-witnesses and court documents are available for review. In this copy, three single-shoe pictures are my old shoes alleged by Kmart as its new shoes. These pictures were taken at Police Department on 11-1-1989 before the trial. The six pairs of shoes (one in the plastic bag) (in picture are mixtures of true and false evidences) together with perjury were used to confuse or lure the jury to convict me, an innocent citizen. This picture was taken on 4-19-1991 after I won my appeal at Judge Battani's Court. Prosecutor then destroyed all these evidences without a court order while he appealed and lost. The unjust charge was later dismissed in a pretrial on 7-29-93. In 1993, I filed my complaint. I should have my constitutional rights to get my justice served.



EXHIBITS

Police Report

BEST AVAILABLE COPY

VAN BUREN TOWNSHIP POLICE DEPARTMENT

46425 Tyler Road
Belleville, Michigan 48111
Telephone: 699-8930

CASE NUMBER: 81-035-89 | CFS: 793 | ORIGINAL / SUPPLEMENTAL | NATURE OF INCIDENT: LARCENY

DATE RECEIVED: 12-12-89 | TIME RECEIVED: 10:04 AM/PM | ARRIVAL TIME: 10:04 AM/PM | RECEIVED FROM: DISPATCH

LOCATION OF INCIDENT: RAWSONVILLE K-MART, BELLEVILLE MI.

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): K-MART | D.O.B. | AGE | SEX

DISPATCHED ON OR AT: DATE 12-12-89 TIME 10:04 HRS DAY SAT. | DATE | TIME HRS | DAY

COMPLAINANT'S ADDRESS: 2095 RAWSONVILLE RD BELLEVILLE MI 48111 | TELEPHONE | OPS # | SSN

DISPATCHED BY | ADDRESS | TELEPHONE

WITNESS NAME (LAST, FIRST, MIDDLE): HILL, FRED (K-MART SECURITY) | ADDRESS: 2095 RAWSONVILLE RD BELLEVILLE | TELEPHONE

WITNESS NAME (LAST, FIRST, MIDDLE) | ADDRESS | TELEPHONE

SUSPECT NAME (LAST, FIRST, MIDDLE): CHOU, CHI-MING | DOB OR AGE: 11-15-31 | RACE: A | SEX: M | OPS #: P-NN-IK-DA-676 | SSN

SUSPECT ADDRESS: 1520 HOLMES RD #16, YPSILANTI MT. 48198 | TELEPHONE: 269-0294 | ARREST NO. | IDENTIFIERS

SUSPECT NAME (LAST, FIRST, MIDDLE) | DOB OR AGE | RACE | SEX | OPS # | SSN

SUSPECT ADDRESS | TELEPHONE | ARREST NO. | IDENTIFIERS

T = TOWED | R = RECOVERED | S = DAMAGED SUSPECT | YEAR | MAKE | STYLE | COLOR | LICENSE | YR/STATE | VIN

REGISTERED OWNER | ADDRESS | LAST SEEN TRAVELING ON

P = LOST | R = RECOVERED | D = DAMAGED OTHER | VALUE $ 17.83 | IN FILE NO. | RECOVERED USED BY | EVIDENCE NO. | LATENT PRINTS NO.

ARREST MADE BY: A/D | INVESTIGATED BY: A/D | DISPOSITION BY: A/D | IS THERE SIGNIFICANT REASON TO BELIEVE THIS CRIME MAY BE SOLVED WITH A REASONABLE AMOUNT OF INVESTIGATION? YES/NO

STATUS: 1 OPEN/UNDER INVESTIGATION | 2 CLOSED | 3 EXCEPTIONAL CLEARANCE | 4 INACTIVE | 5 UNFOUNDED | 6 REFERRED TO OTHER DEPARTMENT | 7 ARREST WARRANT REQUESTED

ON THE ABOVE TIME AND DATE, REPORTING OFFICERS WERE DISPATCHED TO THE ABOVE LOCATION ON A SHOPLIFTER COMPLAINT. UPON ARRIVAL OFFICERS MET WITH THE ABOVE WITNESS AND SUSPECT. WITNESS (STORE SECURITY) STATES THE ABOVE SUSPECT HAD TRIED ON THREE PAIR OF WORK SHOES AND KEPT THE THIRD PAIR ON SUSPECTS FEET. SUSPECT THEN PAID FOR THE PAIR OF SHOES AND ATTEMPTED TO LEAVE THE STORE WITH THE UNPAID PAIR OF SHOES ON HIS FEET. SUSPECT WAS THEN DETAINED BY THE ABOVE WITNESS (ATTACHED) OFFICERS THEN TOOK SUSPECT INTO CUSTODY AND TRANSPORTED TO THE STATION. UPON ARRIVAL OFFICERS ISSUED APPEARANCE TICKET #3437 TO THE SUSPECT AND COLLECTED A ONE HUNDRED DOLLAR BOND. OFFICERS THEN RELEASED SUSPECT. OFFICERS CLEARED, CASE CLOSED.

CASE NUMBER: 81-035-89

INVESTIGATED BY: D. DURKEE #113, P. WAKELAND #753 | REVIEWED: TPO | ASSIGNED TO | ASSIGNED BY | DATE

APPENDIX D

* * *

this case is going to be that those boots were the boots that Mr. Chow had bought previously. That he had bought those boots, he had come in wearing those boots, and he was not leaving with those boots.

Now, you will have an opportunity ladies and gentlemen to view those boots, okay. And you'll have an opportunity to make your own assessment, that we claim - - and we claim that the boots that you are going to see were the boots that were brand new from K-Mart, and that were put on his feet, and he attempted to leave. Now, when you see those boots, the del - - I presume, and I'm only guessing, but when you see those boots, okay, I believe that the defense is going to claim, and defense counsel's going to argue to, look at those boots, those boots are used. Those are not brand new boots. And when you look at those boots, you might very well feel that way, well, yeah there is some wear on those boots. And if that's all you knew, you might believe it. But I am going to submit testimony here today from two witnesses, all right. One witness, as I indicate is going to be a Jill Fehrenback. And she is the shoe salesman, you will find out, from the K-Mart Store. And she will testify that she observed Mr. Chow go into the shoe department store, that at the time that he entered the department, she saw these old pair of shoes that were on his feet. That she observed him trying on new pairs of

shoes. That she observed him walking out of the department with a brand new pair of boots on his feet. And that she subsequently observed him walking around the store, scuffing his heels on the floor in an effort to somehow make those boots not look like they're new anymore.

Now, not only will you hear testimony from that witness, but I'm going to put on the stand, the testimony of Mr. Fred Sweet. And Mr. Fred Sweet, you will find out is the Loss Prevention Manager, Security Manager, however you want to classify him, from the K-Mart Store. And you will also hear Mr. Sweet testify that he also made the similar observations once he was informed of a potential shoplifter, that he observed Mr.Chow walking around the aisles once he'd put the boots on his feet. And also observed Mr. Chow scuffing his heels throughout the store, prior to eventually going to the cash register and making an effort to pay only for the boots that were in his hands, but not for the boots that were on his feet.

That ladies and gentlemen, is in essence, what this case is about. I submit to you, that after you hear, okay, the witnesses testimony, and credibility and observation of t. he witness, and their memory as - - as Judge Zaborowski's indicated, is very important in determining what really. happened back on August 12th, 1989. I submit, that once you hear the testimony, you make your own observations of the

[38]

Q department Mr. Chow headed for at the time that he left the shoe department?

A He left the shoe department going towards the left, back towards Home In - - Home Improvement and the garden shop, and then--

Q Now you indicate the Home Improvement Garden Shop, what merchandise is contained in that department?

A Flowers and dirt and - Okay--
--garden--

Q --do they sell plants in that department?

A Yes, they do.

Q Okay. They've got potting soil in that department?

A Yes, they do.

Q Can you indicate for us what type of things are on the floor, if anything at all, in the Home and Garden department? There's dirt and pieces from the - - the flowers on the floor.
Okay. Would it be a fair statement that that particular area of the store is - - is less cleanly than - - than the other areas of the store?

A Yes, it would.

Q Now did you see Mr. Chow after he left the shoe department, did you see him continue to walk around the store?

A Yes, I did. About five minutes later he came back past

the

[57]

- - the footwear department into the mens clothing area. Okay.

Q Did you have an opp - - opportunity to observe Mr. Chow as he walked back through the shoe department into the *mens* clothing?

A He didn't walk into the department, he walked past it-- You say passing, you mean like an aisle past it? Yeah.

Q Okay.

A He was scuffing his heels still.

Q Okay. And then you indicated you observed him going into the mens department?

A Hmm-hmm (affirmative response)

Q Okay. And when you observed - - when he walked in the mens department, what if anything, did you observe with respect to Mr. Chow?

A I just saw him walking around, that's all I saw.

Q Okay, Did you ever see him pull any merchandise out and look at it?

A No.

Q After Mr. Chow then proceeded into the mens department, did you see Mr. Chow again?

A After he was ou - - when he come out the mens department he was going up the center aisle of the store--

Q Did you observe--

A --towards the check-outs--

[58]

Q Back on August 12th, 1989, were you employed with K-Mart as the Loss Prevention Manager at that time?

A Yes, I was.

Q Other than being a Loss Prevention Manager for K-Mart do - -do you have any other employment?

A Yes, I do.

Q What employment would that be?

A I work with the Van Buren Township Police Department.

Q Okay. And in what capacity are you employed with the police department?

A A Reserve Officer at the time.

Q Okay. Have you received any training as a police officer for Van Buren Township?

A Quite a lot.

Q And just briefly, what training does that entail?

A Currently I'm Certified Police Officer, I've been through the Police Academy, the Reserve Academy, so just about all there is to do.

Q And you indicated you went through the - - is there two
academies, a Reserve Academy--

A There's--

Q -another academy?

A And - - that's right, the Reserve Academy, and the real
Police Academy.

.Q Okay. And did you successfully complete both those academies.

[80]

Q Did you see Mr. Chow come into the K-Mart Store at that time?

A I didn't see him come in the store at the time, when he walked in the store, I wasn't aware that he walked in the store.

Q Okay. When did you first become aware, or obtain knowledge that Mr. Chow was in the K-Mart Store?

A I received a phone call from a Jill Fehrenbach, who was
currently working in the footwear department.

Q Okay. And can you indicate for us what that call indicated?

A She indicated that there was a - - a person in the footwear department which had put on a pair of shoes and the suspect and the possible shoplifting.

Q Okay. So what did you do in response to that call?

A 'I then - - she then pointed the person out to me. I then vent upstairs to a security window, which is a one-way mirror, observation window, and observed the defendant in the store in the footwear department.

Q And the defendant, you're referring to this gentleman sitting right next to Officer Wakeford?

A That's correct.

Q All right. You observed him where - - where did you first observe him?

A In the footwear department.

Q Okay. And what, if anything, did you observe Mr. Chow doing

at that time?

A At that time he was walking - - just walking out of the footwear department, heading towards another section of the store.

Q Okay. What other section of the store would have have been?

A It was towards the Home Center, Garden, Patio area.

Q And what, if anything, did you observe Mr. Chow doing as he was walking to that area?

A He then was - - was walking - - he would - - would scuff his feet, and occasionally would look down at 'em and begin to scuffing 'em and walked through the store.

Q Were you able to observe Mr. Chow scuffing his heels?

A Yes, I was.

Q What did you do then - - or strike that.
When you first made the observation of Mr. Chow scuffing his heels, where were you at this time?

A I was still located in the observation window upstairs.

Q Okay. Did you at any point ever leave that area?

A Yes, I did.

Q Okay. For what purpose?

A To follow behind the suspect.

Q Okay. And did you then proceed to follow behind Mr. Chow?

A Yes, I did.

Q Okay. And where did you see Mr. Pr - - Mr. Chow proceed, in what department did he go into next after he left the

shoe department?

A He went to the Home Center Department, the Home Center Patio area.-

Q Okay. And can you indicate for us what type of merchandise is located in that particular department?

A There's several plants, there's also hardware supplies, soil, basic - - your lumber area.

Q Do you recall the condition of the floor at that particular time?

A Well, this was at closing time, so the floor was pretty well - - it was dirty.

Q Okay. Did you observe Mr. Chow go into that

A Yes, I did.

Q Okay. Did you observe him leave that department?

A Yes.

Q And after leaving the Home Center Department, where did he then proceed to?

A Proceeded to come - - almost make a circle and come back around by the Sporting Goods Department, come back through - - right across the footwear, around by the apparel section. Kind of made a U-turn through the whole store.

Q And when you ware making these observations of Mr. Chow, while you were following him, did you observe Mr. Chow scuffing his heels?

A Yes, I did.

[84]

Q Did you observe him scuffing his heels throughout the entire department--

MR. O'KEEFE: Object, leading the witness

THE COURT: Sustained.

BY MR. CURTIS:

Q When you observed Mr. Chow walking into the Home Department what if anything, did you observe Mr. Chow doing?

A He was scuffing his heels and his feet.

Q When you observed Mr. Chow leave the Home Department pre ceeding to the next department, what if anything, did you observe Mr. Chow doing?

A Throughout his continuous through the store, he was scuffing his feet all the way throughout the store.

Q Okay--

A He would occasionally look at his feet to - - just look down at 'em.

Q Did he have anything in his - - in his hands at that time

A He was pushing a shopping cart.

Q Okay. Do you know - - did you have an opportunity to see what was in that shopping cart?

A There were sandwich bags and two other work boots.

Q Okay. When you say two other work boots, would that have been work boots similar to that marked as People's Exhibit Number Two?

A Yes.

[85]

on the rack, that just previously Ms. Fehrenback had straightened up, because these shoes were going on sale, okay, and she knew what the condition of the at rack, and watched him - - and watched him take off those shoe. And if you find that in Tact he did take those off and try to exchange, then you've got to find him guilty of larceny.

Now, I realize we've got an older gentleman here. I realize we're talking shoes that are maybe $23, that he is a professor. That can't weigh in your mind here today, because the only issue is did he do it or didn't he do it

.

We've got Fred Sweet that has testified that she - that he observed him walking through the aisleways scuffing his heels. Ladies and gentlemen, they both saw that, okay. And as soon as he was stopped by the K-Mart security, he

immediately points to the heels. Of course, Mr. Chow is a smart man, but he's not smart enough, because he didn't know that he was being watched by people. He thought he could get away with it, and he was wrong. Because there were people that observed him scuffing his heels. And sure, it makes a great defense, look at the heels. Well, if no one saw him scuffing the heels, you're going to believe absolutely that in fact these shoes are old shoes and not new ones. But when he scuffs his heels, ladies and gentlemen, that's the affect that happens. And the reason why I - - you're going to look at People's Exhibit Number Fifteen. Fifteen

[135]

happened. did, she'd have the whole detail, if we did, she'd have a ten page report. All right. And that's not what they're supposed to do. So putting any emphasizes on this whatsoever, is totally wrong, because you know darn well she knew exactly what she was talking about. That she has a very good memory, and knew what she observed. Okay. And she didn't have to write down everything.

And for now, Mr. O'Keefe to say; oh, well now they come up here and say he's scuffing his feet. Ladies and gentlemen, we knew what his defense was from the moment that he was stopped. The first thing he says is, look at-- my heels, look at my heels. Sure, we knew that. But - -and so, these report - - reports were prepared afterwards, so we don't need to cover up anything.

Lastly, all I want to state is, you know, Mr. Chow supposedly bought these shoes six days earlier, well he didn't know when he bought the shoes. Counsel says he bought 'em six days earlier. Well, did he buy 'em six days earlier or

didn't he. And if he did, you know, where's the receipt. I don't have no receipt. Do you have something to show that he bought 'em. He didn't buy 'em ladies and gentlemen, and ask that you find him guilty.

Thank you.

THE COURT: Members of the jury, the evidence and the arguments in this case are finished. And I will now. . .

APPENDIX E

Court of Appeals
State of Michigan

ORDER

PEOPLE OF VAN BUREN TWP	) Maura D. Corrigan
	) Presiding Judge
v.	)
	) Docket # 138761
CHI-MING CHOW	) LC# 90-019210 AR

_____/

On its own motion, the Court amends its order of April 22, 1993, as follows:

The Court orders that the motion for a special meeting to view the video tape is denied.

The Court further orders the appellee to submit a copy of the video tape within seven (7) days of the Clerk's certification of this order for this Court's review. The appellee is directed to delete from the video tape those portions to which the appellant has objected, all appellant's objections being well-taken.

A true copy entered and certified by Ella Williams, Chief Clerk, on

April 28, 1993
Date

/s/_____
Ella Williams
Chief Clerk

VIDEO TAPE

MICHIGAN COURT OF APPEALS 1993 VERIFICATION OF CHI-MING CHOWS VIDEO TAPE RECORDING

(Note: At the end of this verified video tape a TV-2 1993 report of the Kmart case was added.)

VIDEO TAPE

LAW OFFICES OF
WILLIAM E. ZIEM, P.C.
990 DECKER ROAD
WALLED LAKE, MI 48090
TELEPHONE (313)624-63320

April 27, 1993

Court of Appeals
900 First Federal Building
Detroit, MI 48226

Re: People of Van Buren Township v. Chi-Ming Chow
Docket No: 138761

Dear Clerk,

Enclosed please find five copies of my client's video tape which has been edited per the order dated April 22, 1993, my client's letter with exhibits which explain the minutes of the video tape
and a Proof of Service.

Please contact me if you have any questions.

Sincerely,

/s/_____
William E. Zeim

Enclosures

cc: Matthew G. Curtis, Atty.

VIDEO TAPE

Re: Michigan Court Of Appeals case: 138761.
Subject: Newly edited video tape.
Date: April 27, 1993.

Today, April 27, 1993, I, the Appellee, respectively submit 5 newly edited video tapes ordered by this Honorable Court on April 22, 1993. The new video tapes is used as a substitution for the physical evidence of this case destroyed by the prosecutor. The following statement is a description of the contents of the newly edited video tape:

1. 0 - 4 min.: This section of the tape shows one of the two pairs of new shoes purchased by Appellee from Kmart on August 12, 1989, the day of the incident. Its size is 6 ½. The purchase receipt is attached to the shoes. This section was recorded at Appellee's home before the trial of 5-18-90. The surfaces of the new shoes are shining and smooth without wrinkles. The sides and bottoms of the new shoes are clean and flat. This pair of new shoes was originally planned to be used as a comparison with my old shoes in court. (More information regarding this pair of new shoes will be given in the last section of this tape.)

2. 4 - 7 min.: This section shows Kmart's first eye-witness report of the incident of August 12, 1989. It was written and signed by saleswoman Jill Fehrenbach right after the incident. Her report is as follows:

> I, Jill A. Fehrenbach witnessed Mr. Chiming Chow tried on a pair of workshoes sold in the Footwear Dept. Then he walked out of the Dept. with the new shoes still on his feet. He left his old shoes in dept. on the shelf where the shoes he took are located. Mr. Chow then walked toward the front checkout with the

VIDEO TAPE

new shoes still on.

(Remark: The distance between the shoe-shelf and front checkout is about 75 steps and it takes about 1 minute to walk through. It is impossible to change a pair of shining new shoes into my well worn off one-week old shoes splashed with mud by walking 1 minute on Kmart's polished floor. After finding the condition of my old shoe, Fehrenbach testified in trial of 5-18-90 that Mr. Chow scuffed his shoes from department to department and was followed by Kmart's security police, Fred Sweet, for 15 minutes. All the physical evidence and her totally contradictory testimonies are facts of her false accusation and perjury in court.)

3. 7 - 8 min.: This section shows photos of my old shoes and Kmart's old shoes taken from Van Buren Police Department Detective Green's office on 11-1-89. Kmart's old shoes are shown one half out of a bag. All others are photos of my old shoes. There are clear worn off signs and pieces of grass mixed with mud on the bottom of my old shoes. There are also wrinkles and splashed mud on the surfaces and sides of my old shoes. These photos are on files of 34th District Court, Van Buren Township Prosecutor's office, Wayne County Circuit Court Of Appeals and Michigan Court Of Appeals.

4. 8 - 14 min.: This section was recorded in the Van Buren Police Department on 5-4-90 just before the trial of 5-18-90. Attorney O'Keefe, an unnamed police officer of VBPD and myself are the three eye-witnesses of this recording. At that time, there were just two pair of shoes as evidences of this case. One pair was Kmart's old shoes sealed in a plastic beg

by State Police Laboratory. This is because after the finger print test which did not find my finger print on Kmart's old shoes, the Laboratory sealed them in a plastic bag so that no new finger print could be added on them. Therefore it is very easy to identify the second pair of shoes, a pair of my old shoes which is not in a bag. At the beginning of this section, the picture clearly shows that the front inner sides of my old shoes are splashed with mud. There are also a lot of mud spots on the sides and real ends of the shoes. This is because I once ran through heavy rain just one day before the incident. The worn off signs as indicated in previous photos section are also clearly shown. Some mud mixed with grass are shown on the bottom of the shoes. The deep wrinkles and scratches are also clearly shown on the surfaces. The evidence of a pair of one-week old shoes worn outside of the store is obvious and can be verified by naked eyes.

5. 14 - 24 min.: This section was recorded at Hon. Judge Battani's jury room on 4-19-91 after a new trial was ordered by her Honor on February 1, 1991. My attorney, Mr. Stelmach, Prosecution official, Mr. Otis, and myself are the three eye-witnesses of this recording. In this recording, there are 7 exhibits. They are 1 Kmart Fehrenbach's report of 8-12-89 and 6 pair of shoes. 5 pairs are of the same brand. To make it clear, the 7 exhibits are stated as follows:

> People's Court Exhibit 1 is Kmart's old shoes sealed in a plastic bag.
>
> People's Court Exhibit 2 is my old shoes. Now they are tied together by shoe laces. Its size, 7, is shown inside of the shoes. All the worn off signs, splashed mud, pieces of grass, deep wrinkles and scratches on my old shoes are also recorded.

VIDEO TAPE

People's Court Exhibit 16 is my size-6½ new shoes. The purchase receipt of 8-12-89 is still attached to this pair of new shoes. They were planned to be used for comparison with my old shoes during a live demonstration in front of the jury. This plan was not carried out because of the prosecutor's conspiracy.

People's Court Exhibit 14 is Kmart Fehrenbach's report of August 12, 1989. The physical evidence of my old shoes proves that her report was a false accusation.

People's Court Exhibits 15 and 17 are Kmart's two pairs of used shoes (size 10) produced by the prosecutor during the trial of 5-18-89. They were false evidences because they are contradictory to two original reports written by Kmart's two eye-witnesses under no pressure whatsoever with their fresh memories right after the incident of 8-12-89. These false evidences were created by the prosecutor. They were then mixed with the true evidence to confuse the jury.

People's Court Exhibit 3 is a pair of new shoes (Size 10 ½) added by my trial counsel. It only added more confusion during the trial.

After recording all the 7 exhibits, I, the Appellee, sealed them in an evidence box. On the top of this box, there is a large writing stated "Evidence Shoes". (Note: This evidence box is a used box of 34th District Court. This is why there are some other old marks on the box which are irrelevant to my case.) I wrote the case number, signed and dated on the box. Mr. Stelmach and Mr. Otis then also signed and dated on the box.

VIDEO TAPE

The recording is now completed. Mr. Otis then wrote and signed a receipt to acknowledge his receiving of the evidence box form Hon. Judge Battani. He then took the evidence box and left the court.

/s/_____
Chi-Ming Chow, Appellee

APPENDIX F

Joseph H. Wagner, J.D.
Attorney at Law
432 West Michigan Avenue
Ypsilanti, MI 48197
313-485-6767

September 3, 1993

George E. Ward, Esq.
Chief Asst. Prosecutor for Wayne County
1441 St. Antoine
Suite 199
Detroit, MI 48226-2302

Dear Sir:

I am writing on behalf of my client, Chi-Ming Chow. The enclosed documentation chronicles a most unusual case of a citizens' attempt to defend himself against false accusations that I have ever encountered. My client wishes to meet with a representative of your office to discuss his desire to file a complaint.

I feel the evidence is substantial that he was falsely imprisoned and denied the civil rights guaranteed to all citizens under our State and Federal Constitutions.

He was handcuffed by a private security guard as well as arrested without a warrant by a Van Buren Township Police Officer for a misdemeanor which did not occur in his

presence. Further his property as well as all other physical evidence was disposed of in violation of Court Order.

As a former student of yours at Detroit College of Law in 1973, I hope you feel free to contact me, or perhaps someone else from your staff so that we may arrange to let my client present any necessary documentation to allow your office to make a decision about his desire to file a complaint.

Sincerely,

/s/_____
Joseph H. Wagner
Attorney at Law

/mlc
Enclosures

Correspondence

George E. Ward
Chief Assistant Prosecutor
Office Of Prosecuting Attorney
1200 Frank Murrph Hall Of Justice
1441 St. Antonine Street
Detroit, Michigan 48226-2302

Chi-Ming Chow
2580 Holmes Road, No. 16
Ypsilanti, Michigan 48198

December 16, 1993

Dear Mr. Ward:

I have received a copy of your letter of December 1, 1993 to Attorney Wagner regarding my complaint against Kmart and Van Buren Township employees. Your letter asks for criminal statute and evidence to establish a beyond a reasonable doubt element of the cited statute. I shall give you all the necessary criminal statutes and evidences one by one to comply with your request. However, please allow me first to make the following statement in response to your letter:

1. My complaint filed on September 8, 1993 is a new and independent case in your office. I hope you will conduct your investigation independently and fairly. I hope that your investigation will be mainly based on evidence and fact. Evidence and fact are better than eloquent argument. In my complaint, I have attached a copy of my "To Whom It May Concern letter which contains all the essential court documents and photos copies. I also have a video tape which you have not reviewed. This tape is a comprehensive recording which contains important documents and living and sound recordings of all the physical evidences. Eye-witnesses from both sides

for this recording were also recorded in the tape. This is why the tape actually verifies its own authenticity. (A copy of the description of the content of this video tape is attached to this letter.) All my photo copies and video tape are used as a substitution of my physical evidence which have been maliciously destroyed by the township prosecutor and police department. All photos and video tape have been legally verified and are now on files of Van Buren Township prosecutor's office, 34th District Court, Wayne County Circuit Appeals Court and Michigan Court Of Appeals. Seeing is believing. This is why we have asked your office to view all the evidences and facts of that you can investigate my case independently.

2. The main subject of the Michigan Court Of Appeals' decision and opinion of June 1, 1993 was to deny the township prosecutor's frivolous appeal. This decision is in favor of my position. It is not to clear the township prosecutor's wrong doings. The original transcript of this decision is printed on pink paper with an cover letter which states:' Under MCR 7.215 (A), Opinions not designated for publication at the time of release are printed on pink paper." One of my attorneys, Mr. Ziem, has commented that in order to avoid to create a precedent in publication, the court omitted the items of conspiracy and destruction of evidence. The court gave no explanation about the omission of conspiracy and destruction of evidence as it did for other items.

However, the three Hon. Judges of Michigan Court Of Appeals denied the prosecutor's frivolous appeal for ineffective assistance of counsel. It's opinion states that the defense counsel allowed the prosecutor to use Kmart' contradictory testimony and evidence in court without his objection. In another word, it means that the defense counsel collaborated with the prosecutor's conspiracy to use perjury in court. Also

Correspondence

Wayne County Circuit Appeals Court granted a new trial for my appeal. Its opinion states that Kmart self-made evidence and contrary statements used in trial contradicts with their own prime witnesses reports. There are clear obvious worn off signs and dirt from outside of the store on Defendant's shoes. The burden of the contrary statement is beyond reasonable doubt. It was absurd that the defendant's counsel allowed Kmart to use its contradictory evidence in the trial without his objection. After making these comment, the Hon. Judge Battani ordered a new trial for ineffective assistance of counsel. Furthermore, the important physical evidence seized by legal process was ordered by Wayne County Circuit Appeals Court to be safely kept by the Van Buren Police Department (VBPD) for future new trial use. Now the physical evidence is destroyed by VBPD based only on the so-called unknown gentleman's phone call. This wilful neglect of duty and malicious destruction of evidence is to cover up their crime. This is a disgraceful scandal in our prosecution and law enforcement system. It is a contempt of the court order for destroying court evidence without a court order. (I am also attaching a copy of the Questionnaire Regarding Destruction Of Evidence for your reference.)

3. ACJ's opinion regarding the difficulty to file my criminal complaint is based on its experience of racial prejudice and injustice. Criminal complaints are filed everyday. Some are only based on circumstantial evidence or a witness's statement or allegation. In my complaint, I have all the fact, evidence and eye-witnesses for my complaint. Yet I have difficulty to file my complaint. However, no one is above the law. I have confidence in our National Constitution which assures equal justice and equal protection of our laws for all citizens born or naturalized in the United States. I shall try every possible effort to file my complaint so that justice can be done. This will benefit all other people of our community so that they can get

some extra protection of our law in their daily life.

I now state all the necessary criminal statutes and evidences of my complaint to comply with your request as follows:

1. MCLA 750.411a (Michigan Penal Code 750.411a), Fictitious crimes, report to police officers: (False *accusation* and false arrest by Kmart employees. Township police's arrest without a warrant for a false accusation which did not occur in his presence.)

Evidence, fact and witness: My photos and video tape recording of my old shoes show that there are rain splashed mud, wrinkles and scratches all around the shoe surfaces. There are deep worn off signs, pieces of dried grasses and dirt on the shoe soles and heels. Also Kmart's two original incident reports of August 12, 1989 (the same day of the incident occurred) written by Jill A. Fehrenbach and Fred Sweet stated that Mr. Chow put a pair of new shoes on his feet and then walked toward the front checkout. Failing to pay for the merchants on his feet. It is also a fact that Kmart's Fehrenbach was a student of my school, Oakland Community College, in 1986 and 1987. (For detail, please refer to my To Whom It May Concern' letter sent to you on September 8, 1993.)

Conclusion: It is impossible to change a pair of new shoes into the condition of my old shoes by walking 75 steps from the shoe shelf toward the front checkout as stated by Kmart's eye-witness. This fact proves the false accusation and false arrest committed by Kmart. The truth of this fact is beyond reasonable doubt. This is why my request to view my photo copies and video tape of the destroyed physical evidence is a must for your investigation. This false accusation and false arrest is the ORIGIN of all other crimes committed by Kmart and Van Buren Township employees. (For your convenience,

Correspondence

I am again attaching copies of Kmart's two original incident reports and two pages of my photos copies of the physical evidences. A picture is worth a thousand words.)

(Note: On the other hand, if you are an honest and fair prosecutor, after reading Kmart's two prime incident reports of August 12, 1989 and viewing the condition of my old shoes , would you approve the case and believe that Kmart's accusation or allegation was beyond reasonable doubt?)

2. MCLA 750.425 (Michigan Penal Code 750.425): Inciting or procuring one to commit perjury. (Township prosecutor knowingly inciting Kmart employees to commit perjury in court to avoid being sued for damage.)

Evidence and fact: Before the trial, the Van Buren Township prosecutor Matthew Curtis and Kmart worked together to allow Kmart employee, Fred Sweet, to fabricate false evidence shoes and make contradictory testimony to be used in court. This perjury has been recorded in court document. (For detail, please refer to my "To Whom It May Concern" letter.)

3. MCLA 750.149 (Michigan Penal Code 750.149): Compounding or concealing offense. (Also see Prosecutional Misconduct 5.61 (e): Violations of Discovery Rules. The prejudice suffered by the defendant.)

Evidence and fact: The purpose of item 2 of this section stated above shows that the township prosecutor and Kmart used fabricated false evidence and false testimony to confuse the jury so that they could cover up and conceal Kmart's criminal act of false accusation.

4. MCLA 750.157a (Michigan Penal Code 750.157a): Conspiracy commit offense or legal act in illegal manner.

Correspondence

Evidence, fact and witness: In order to avoid being sued for damage, the township prosecutor Curtis and Kmart created the following conspiracy: Before the trial, the township prosecutor asked Judge Zaborowski to deny the defendant's request for a living demonstration in front of the jury at the scene of thein incident. However, MCR 6.414, D allows such experiment at the scene of the incident. This demonstration and experiment can prove the defendant's innocence immediately. The prosecutor also stipulated with the defendant's trial counsel, Mr. Kurt O'Keefe, to allow Kmart to use false testimony and false evidence in court without his objection. The result of this conspiracy was that the perjury of their false testimony and false evidence either confused the jury or gave the prejudiced jury a good excuse to convict an innocent Chinese American. The defendant had to fight for 4 years in three courts to clear his name. (For detail, please refer to my "To Whom It May Concern" letter.)

Conclusion: Conspiracy is a combination of two or more persons to commit an unlawful act to injure another. It is an actionable tort and a criminal offense. My case fits for this definition. Furthermore, based on $JI 2d 117.01, the elements of Malicious Prosecution (Criminal Proceeding) include a prosecution caused or continued by one person against another and the termination of the proceeding in favor of the person who was prosecuted. My case again fits all these elements of Malicious Prosecution.

5. MCLA 750.422 (Michigan Penal Code 750.422), Perjury committed in courts:

Evidence, fact and witness: After the township prosecutor Curtis saw the condition of my old shoes and read Kmart's two reports of August 12, 1989, he knew it was a false accusation. At first, he told my attorney, Mr. Steven Stelmach, that if I

admitted the accusation, there would be no trial and charge would gradually faded away. I said No. On November 21, 1989 at a pretrial conference, he told my attorney and me that the shoes looked bad and he might drop the charge. On May 1, 1990, he called my attorneys and tried to negotiate that he would drop the charge if I would waive all the civil liability against the township and Kmart. (For confirmation, please refer to my "To Whom It May Concern" letter.) ! refused this unfair offer. In order to avoid being sued for damage, the prosecutor and Kmart created their conspiracy. (See item 4 of this section stated above.) This conspiracy carried out their perjury, false testimony and false evidence, in court. (For detail, please refer to my "To Whom It May Concern" letter.)

Conclusion: Making false statement and using false evidence under oath in court is a criminal offense of perjury.

6. MCLA 750.426 (Michigan Penal Code 750.426), Court reasonably believes perjury committed:

Evidence, fact and witness: In order to distort the physical evidence, Kmart's two employees, Fehrenbach and Sweet, testified under oath in the trial that they saw I walked around the store and scuffed the shoe heels for 10 to 15 minutes. Their testimonies were totally contradictory to their two original incident reports of August 12, 1989 which stated that I walked directly from the shoe shelf toward the front checkout. (Please refer to my "To Whom It May Concern" letter) Any store eye-witness sees such unusual act of scuffing the shoe heels around the store for 10 to 15 minutes will report such act as an important evidence of a crime in his/her incident report. Yet Kmart's two original eye-witnesses' reports of August 12, 1989 did not report one word about the scuffing shoe hells right after the incident with their fresh memories. This is because such action never happened. (For detail, please refer to my "To

Correspondence

Whom It May Concern" letter.) If it is necessary, we can invite a forensic expert to make an experimental demonstration. We will let Kmart's Sweet wear a pair of new shoes and then demonstrate his so-call 10 to 15 minute scuffing shoe heels around the store. At the same time, we will ask a few store saleswomen and security guards not related to Kmart to follow and watch Sweet's demonstration. Right after the demonstration, we shall ask these eye-witnesses to write their eye-witness incident reports. If they are fair and honest, they will report the most important and unusual criminal act, namely, 10 to 15 minute scuffing shoe heels around the store. This fact will convince the jury that both Kmart's Fehrenbach and Sweet were lying in court under oath. They committed perjury in court. (Please also notice that no matter how Sweet scuffs his shoe heels, he can not get rain splashed mud on his new shoes from Kmart's floor.)

Conclusion: Making false statement in court under oath is a perjury.

7. **MCLA 754.484** (Michigan Penal Code **754.484**), apprehend on being required to do so by justice.

Refusing to

Evidence, fact and witness: Township prosecutor Curtis refused and defied court orders to keep the physical evidence for new trial and hearing. On February 1, 1991, Wayne County Circuit Court ordered the prosecutor to send all the physical evidence back to Van Buren Police Department to keep them for the new trial. On March 31, 1992, Michigan Court Of Appeals made order to compel the prosecutor to produce exhibit at the hearing. (For detail, please refer to my "To Whom It May concern" letter.) However, the prosecutor and the police department destroyed all the physical evidence without a court

Correspondence

order.

Conclusion: Destruction of the court evidence without a court order is a contempt of court. Refusing to to produce evidence requested by court is 'refusing to apprehend on being required to do so by justice.

8. MCLA 750.478, 750.388 and 750.149 (Michigan Penal Codes 750.478, 750.388 and 750.149) , Wilful neglect of duty, Malicious destruction of personal property seized by legal process and Compounding or concealing offense. (Also please see Prosecutorial Misconduct Sec. 5.7, Lost or Destroyed Evidence.):

evidence, fact and witness: On April 19, 1991, township prosecution official Otis signed a receipt for Hon. Judge Battani to acknowledge his receipt of the evidence box. He then delivered it to Van Buren Police Department (VBPD) to keep for the future use in the new trial. Also on March 31, 1992, Michigan Court Of Appeals ordered to compel the prosecutor to produce evidence at the hearing. However, on September 25, 1992, when Wayne County prosecution official, Mr. Howard L. Philippart, called VBPD to examine the physical evidence of my case, he was told that the evidence box was missing. 4 days later, VBPD reported in writing that the evidence box was auctioned on August 29, 1992 without a court order. Their destruction of the evidence was based on the so-called unknown gentleman's phone call received by a civilian employee. (This civilian employee turned out to be a middle aged police officer with a police badge.) This whole thing is a disgraceful scandal to the prosecution and law enforcement system. (For detail, please see attached copy of Questionnaire regarding the Destruction of Evidence.)

Conclusion: Base on the evidence and fact stated above, it is

clearly an undeniable case of wilful neglect of duty and malicious destruction of the physical evidence seized by legal process without a court order to cover up their crime and obstruct justice.

Finally, ! hope that you, a government law enforcement official, will do your duty fairly so that justice can be done. I have been told by my attorneys that a prosecutor may be immune from a civil liability lawsuit if he is acting within the scope of his executive authority. However, a prosecutor can not be immune from a criminal act. This is why ! need your office to investigate all the criminal acts in my case. ! would again mention that the natural of my case is worse than the cases of Rodney King and Malice Green. In those two cases, the police officers might have over reacted when they were doing their duties. In my case, the township prosecutor knowingly assisted the criminals to cover up their crimes and harm an innocent citizen so that they could avoid being sued for damage. This is why Attorney Wagner wrote to you that my case was a most unusual case that he had ever encountered. I .hope that your office will appreciate my anticipation of the malicious destruction of the evidence and my effort to preserve the physical evidence for you to investigate. Furthermore, had I worn a pair of new shoes and went to shopping on August 12, 1989 at Kmart, it would have been very difficult for me to prove my innocence. My life and my reputation might have been ruined forever. This devastating situation can happen to any one. This is why ! also hope that my case will teach all stores a lesson. We may ask our law to request that a store must produce absolute evidence such as video tape recording to back up its accusation so that all the people of our community can get some extra protection of our law in their daily lives. My attorneys and I are eager to show my video tape in your office and at the same time, we shall also answer your questions regarding my complaint. Your arrangement for this

appointment will be appreciated.

Very truly yours,
/s/_____
Chi-Ming Chow

c.c.: Mr. Roland Hwang, ACJ President
Attorney Joseph H. Wagner
Attorney Gregory L. Gliha

Correspondence

UNITED STATES SENATE
WASHINGTON, DC 20510-2202

May 17, 1995

The Honorable Frank J. Kelly
Attorney General
Michigan Department of Attorney General
525 West Ottawa
Law Building, 7th Floor
P.O. Box 30212
Lansing, MI 48913

Dear Mr. Kelly:

Enclosed is a copy of a letter I received my constituent, Mr. Chi-Ming Chow, regarding an upcoming meeting with Mr. Robert Ianni of your staff.

I have been working with Mr. Chow for several months concerning the difficulties he is experiencing with the Wayne County Prosecutor's Office. As I understand it, he will be meeting with Mr. Ianni to discuss this matter.

Therefore, I trust that Mr. Chow's concerns will be given careful consideration and that he will be provided the appropriate assistance allowed under the law.

Thank you for your time and attention to this matter.

Sincerely,

/s/_____
Carl Levin

Correspondence

SENATOR ALMA WHEELER SMITH
STATE OF MICHIGAN

November 29, 1995

The Honorable Frank J. Kelly
Attorney General, State of Michigan
Law Building, 7th Floor
525 W. Ottawa
P.O. Box 30212
Lansing, MI 48913

Dear Mr. Kelly:

It has been brought to my attention that one of my constituents, Mr. Chi-Ming Chow, has brought his case to the attention of the Department of Attorney General's Criminal Division. This is a matter of the utmost importance to Mr. Chow and a cause that he has been pursuing for a very long time.

I had the opportunity to attend a meeting with Mr. Chow, his lawyer and Robert Ianni, Assistant in Charge of the Criminal Division. From the evidence presented, it seems to me that Mr. Chow has been egregiously wronged and it is understandable that he so steadfastly pursues this matter. Regaining one's sense of dignity and self-esteem after such an unpleasant episode is important; vindication allows us to put instances of injustice behind us and resume our lives with faith in our system intact.

I will greatly appreciate your attention to his concerns and am confident that your office will give him whatever assistance it is in your power to provide.

Correspondence

Thank you for your consideration of this request.

Sincerely,

/s/_____
Alma Wheeler Smith
State Senator, 18th District

AWS/ms

Correspondence

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

February 1, 1996

Mr. Chi-Ming Chow
2580 Holmes Road, #16
Ypsilanti, MI 48198

Dear Mr. Chow:

Thank you for contacting my office with your concerns. I appreciate your bringing them to my attention.

I have referred this matter to Frank J. Kelley, Attorney General for the State of Michigan, and have asked him to look into your concerns. I hope this situation is soon resolved to your satisfaction.

Again, thank you for contacting my office.

Sincerely,

/s/_____
John Engler
Governor

JE/pr

Correspondence

THE SENATE
ASSISTANT MAJORITY FLOOR LEADER
SENATE JUDICIARY COMMITTEE

VIA HAND-DELIVER

May 8, 1996

The Honorable Frank J. Kelley
Attorney General
State of Michigan
Law Building, 7th Floor
Lansing, Michigan 48909

Dear Mr. Kelley:

Enclosed please find a complaint and related information from Mr. Chi-Ming Chow. As Chairman of the Senate Judiciary Committee, I respectfully request that your office review and investigate Mr. Chow's complaint. I would appreciate it if you would send me a copy of your response.

Thank you for your time and attention.

Sincerely,
/s/_____
Wm. Van Regenmorter State Senator

/sp.ag

enclosures
cc: Mr. Chi-Ming Chow
2580 Holmes Road, No. 16
Ypsilanti, MI 48198

Correspondence

DOCTORS OF INTERNAL MEDICINE
30335 W. 13 MILE ROAD, SUITE 100 • FARMINGTON HILLS, MICHIGAN 48334
TELEPHONE: (810) 626-6500
FAX: (810) 855-0190

STEVEN D. GRANT, M.D., F.A.C.P.
LOWELL S. PAUL, M.D.

June 6, 1996

Chi Ming Chow
P.O. Box 903
Novi, MI 48376

To whom it may concern:

Chi Ming Chow has been my patient since February of 1986. In December of 1989, he complained of anxiety and insomnia secondary to allegations that he stole shoes at a local Kmart. These symptoms have persisted even though the case was dismissed in July of 1993. Mr. Chow feels that there was a conspiracy against him by the police and prosecutors, and is pursuing this through his attorney. Also, he has obtained letters from various selected representatives at both the state and national levels.

I feel that his anxiety and insomnia are definitely related to the events that have transpired since 1989. If you need any more information, please contact my office.

Sincerely,
/s/_____
Steven D. Grant, M.D.

Correspondence

CITY OF ANN ARBOR, MICHIGAN
HUMAN RESOURCES DEPARTMENT

CITY OF ANN ARBOR, MICHIGAN
220 E. Huron, Suite 340,
P.O. Box 8647,
Ann Arbor, Michigan 48107
Phone: (313) 994-2803 Fax: (313) 994-2590

April 21, 1997

Mr. Chi-Ming Chow
2580 Holmes Rd #16
Ypsilanti, MI 48198-4217

RE: Civil Rights Violations

Dear Mr. Chow:

It was my pleasure meeting with you and your attorney on April 18, 1997 to discuss the unfortunate experience you had with the law enforcement agencies in the State of Michigan.

After a review of your video tape and discussion of the evidence you presented, I strongly recommend that you file formal complaints with the following agencies:

U.S. Justice Department
Civil Rights Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001
Telephone: (202) 514-4224

Correspondence

U.S. Civil Rights Commission
624 9th Street, N.W.
Washington, DC 20525
Telephone: (202) 376-8177

Your letter dated April 3, 1997, addressed to the Michigan Attorney General's office clearly outlined your concerns. I suggest that you submit that letter to both agencies.

If I can be of further assistance, please contact me.

Sincerely,

/s/_____
Raymond E. Chauncey
Human Rights Coordinator

cc: Joseph H. Wagner

Correspondence

UNITED STATES COMMISSION
ON CIVIL RIGHTS

624 Ninth Street, NW.
Washington, D.C. 20425

July 6, 1997

Chi-Ming Chow
2580 Holmes Road, No. 16
Ypsilanti, MI 48198-4217

Dear Mr. Chow:

The United States Commission on Civil Rights recently received your complaint.

The Commission was established to conduct studies, hold hearings, issue reports, and serve as a national clearinghouse for civil rights information. As such, the Commission has no authority to provide direct remedial assistance, or offer an opinion as to the soundness of individual allegations.

In order to be helpful, we have forwarded your complaint to:

U.S. Department of Justice
Civil Rights Division
10th and Constitution Avenue, NW
Washington, DC 20530

This agency is authorized to help resolve the problem you described. We have requested that the agency notify both you and the Commission in writing concerning all actions taken to resolve your complaint. Should you need to communicate

further concerning this matter, please contact the referral agency at 202-514-2151.

We appreciate the concern and the circumstances that prompted you to write to the Commission.

Sincerely,

/s/_____
FREDERICK D. ISLER
Assistant Staff Director
Office for Civil Rights Evaluation

APPENDIX G

STATE OF MICHIGAN
34TH JUDICIAL DISTRICT COURT COUNTY OF WAYNE

THE PEOPLE OF VAN BUREN TOWNSHIP

v.

CHI-MING CHOW,
Defendant.

District Court No. 89-4032

_____/

PRE-TRIAL
BEFORE THE HONORABLE HENRY ZABOROWSKI, DISTRICT JUDGE

Romulus, Michigan - Tuesday, July 20, 1993

APPEARANCES:

For the Township:

Mr. Thomas R. Bidari - P41618
2000 Town Center Dr., Ste. 900
Southfield, MI 48075-1100
(313) 355-0300
For the Defendant:

Pretrial Transcript of Dismissal, July 20, 1993

For the Township:

Mr. Joseph H. Wagner - P25408
432 West Michigan Avenue
Ypsilanti, MI 48197
(313) 485-6767

RECORDED BY:

Clema D. Pond, CER 0901
Certified Electronic Recorder
(313) 941-4462

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Pretrial Transcript of Dismissal, July 20, 1993

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WITNESSES:

None

EXHIBITS:

None

[2]

Romulus, Michigan.

Tuesday, July 20, 1993 - at 9:33 a.m.

THE COURT: The People of Van Buren Township versus Chi-Ming Chow.

MR. WAGNER: Good morning, your Honor.

THE COURT: Good morning.

MR. BIDARI: Good morning, Judge. R. Thomas Bidari on behalf of the Township.

MR. WAGNER: Your Honor, the file will indicate that I've filed an appearance today. I'm appearing as co-counsel for Mr. Ziem, who is in Oakland County Circuit Court today, and Mr. Chow has asked that I represent him here at the pre-trial. And that I've had an opportunity to have discussions with Mr. Bidari on this case. And I believe that you'll see that there's a stipulation there that - - on the Plaintiff's motion, to dismiss this case

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COURT RECORDER: Would you state your name for the record, Counsel?

MR. WAGNER: Joseph H. Wagner.

THE COURT: Well, what - - I read the - - the - some something in the file: what happened to the evidence--

MR. BIDARI: Your Honor, it's my understanding that the shoes that were used in 'evidence and that were tagged in, I think the first trial, have inadvertently been sold in

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auction by the County--

THE COURT: All right. So - - during an appeal period; when it went up to Circuit Court, and then there was an appeal from Circuit Court to Court of Appeals-

MR. BIDARI: Yes.

THE COURT: --and the Circuit Court was holding the evidence, which was what, seven or nine pairs of shoes.

MR. BIDARI: Some number of shoes, that's correct--

MR. WAGNER: The--

THE COURT: They--MR. WAGNER: --actually the Van Buren Township Police Department had the evidence, and they're the ones that disposed of it.

MR.BIDARI: Your Honor, that is not my understanding

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THE COURT:. Well, it - - for the court - - under the - - under the - - the report's in the file, but anyway, whoever had possession of the shoes, and I believe it was the Circuit Court, laid there for so many months that they just auctioned them off.

THE DEFENDANT: Can I - - can I say, I know the whole thing, because I was the victim. They--

THE COURT: Were you at the auction?

THE DEFENDANT: Can I speak? Okay--

THE COURT: If you wish--

THE DEFENDANT: Because I know the whole thing. See,

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when we tape record all the evidence in Judge Battani's courtroom, we tape record everything. Then we ask the Prosecutor's official, Mr. Otis, to sign a receipt to prove he did receive the evidence box. So the Judge actually ordered him to send this box to the police, Van Buren Pol - - Van Buren Pol - - Police Department to keep this evidence for the new trial. So then the Prosecutor out here, and he lost. So now we're going to have a new trial now, right. Then they simply neglect their duty to guard and protect the evidence for the new trial. They neglect duty, maliciously destroy the evidence. It's impossible to destroy the evidence, because we saw three people sign, we have a tape. I want - - I want your Honor take a look at the recording. Three people sign on a box, they actually seal the box, make sure nobody can touch it without a sea - - with a - - prese - - prosecution, we say, we must be there in order to open

the box. But they - just as soon as they - - a - - an employee got a phone call, no name, no date, all it says is, this case is over. Well, obviously it's not over, because the court ordered this Prosecutor the care of the box for the new trial. Who - but this lie of - - well, we got a call, no - - no name, no date, just a gentleman said the case is over and can dispose of the box, we don't need it. This is lie. You have right - this is the law, we - - obviously you have law - -

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procedures and you must follow pro - - certain procedures. Besides my new shoes belong to me, I have a receipt on it, you should have returned the new shoe to the owner first. But - - but they didn't do anything, they just - - destro - destroy the evidence, no record, noth - - nothing. This matter is very bad. It just seems to me, they trying to cover up the - - this evidence. It's very clear. How can you destroy the evidence without court order. He should have got a court order to destroy evidence. So obviously, your Honor, I hope you - - we have a tape recording, maybe not today--

THE COURT: Well, I'll grant the motion to dismiss. It's - - it's - - it's not rare, it happens now and again~ We had a case, I guess a Romulus case where - - possession of narcotics was charged, on a felony or something, and then they - - and it went up on appeal, and they - possession of narcotic paraphernalia, it went up on appeal, it was reversed on some technicality. The department thought it was over with, so they dispose of the evidence, all - - every - - except the scale. So they went to trial on the scale, but they didn't win. So it does on occasion--

THE DEFENDANT: Can I say one more thing--

THE COURT: --when these cases are - - are - - are left -

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- are - - spend the time up in the appellate courts, the property -

- people who manage the property room do

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dispose of the evidence inadvertently, whether it was in the police department or circuit court, but this happens on occ - - on occasion--

MR. WAGNER: Your Honor, I would ask--

THE COURT: --but we do not have - - you do not have a case--

MR. WAGNER: I would ask it be dis--

THE COURT: --without the evidence, so it's going to be dismissed.

MR. WAGNER: With prejudice, your Honor, because they are never going to be able to get this evidence back.

MR. BIDARI: Well, your Honor, I don't know, they - - it appears that the shoes are--

THE COURT: Well it'll be dismissed. When - - if you recharge, then you can make your motions--

MR. BIDARI: I'd like to state for the record--

THE COURT: --there's - - there's no acquittal, it's just that the Prosecutor's dismissing for lack of evidence.

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MR. WAGNER: That's - - that's correct.

MR. BIDARI: I - - I share Mr. Chow's frustration as to why the shoes are not here, but let me just say, the Township, I believe, is acting in good faith in dismissing this matter. Obviously, they've spent a lot of time and effort that they are not in any way trying to cover up as Mr. Chow suggested some wrong doing, rather they would

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have proceeded with a new trial as directed by the Court of Appeals--

THE COURT: Yeah, you could - - you could still--

MR. BIDARI: --but we cannot do that--

THE COURT: --go to new trial, a new trial based on verbal evidence, but it's not a good case. Your - - in your discretion you're - - you're not going to go--

MR. BIDARI: Yes, and I believe - - and - - and as I stated, we are acting in good faith based on what occurred, and so I - - I think that--

THE COURT: All right, so we--

MR. BIDARI: --that shows our--

THE COURT: --we brought this case to conclusion, and I don't think you're going to continue to prosecute. But if he does - - there's no acquittal, it's dismissed for lack of evidence.

MR. BIDARI: That's correct, your Honor--

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THE DEFENDANT: But - - I - - I want to say - - I want to say--

MR. BIDARI: Your Honor--

THE DEFENDANT: --we do have a recording of the - all of the evidence--

THE COURT: Well, I - - you - - you keep your recording--

THE DEFENDANT: Yeah--

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THE COURT: --and if - - when you need it, you can give it to your attorney--

THE DEFENDANT: We hope your Honor will take a look at the tape, you know why they want to destroy the evidence, because--

THE COURT: Yeah, if--

THE DEFENDANT: --it's just--

THE COURT: --whenever you need it, you can give it to your attorney.

Anyway, the case is dismissed based on the Prosecutor's motion--

THE DEFENDANT: But we still - - I think all comply to - - fighting for justice, because it was the false arrest false accusation--

THE COURT: Do you want me to do something else now--

MR. WAGNER: You can't do it in this court--

THE COURT: --what would you like me to do next--

MR. WAGNER: --I've already told you that--

THE DEFENDANT: I just ask your Honor, we - - dismiss case is good, but we hope we still have the right to file our complaint for their false arrest--

Pretrial Transcript of Dismissal, July 20, 1993

THE COURT: Well, you--

THE DEFENDANT: --false arrest--

THE COURT: --you have your attorney advise you what to do from here on forward--

[9]

THE DEFENDANT: Okay.

THE COURT: --it's not appropriate for the Court to give legal advice--

THE DEFENDANT: But I - - I think--

THE COURT: --so confer with your attorney--

THE DEFENDANT: --we still - - we still have rights to file complaint, right? We still have a right--

MR. WAGNER: He can't give you that advice, Mr. Chow--

THE COURT: I cannot give you advice, your attorney has to give an - - advice. I can hear the cases on both sides, make determinations--

THE DEFENDANT: Okay--

THE COURT: --but I am not a legal adviser--

MR. WAGNER: Mr. Chow--

Pretrial Transcript of Dismissal, July 20, 1993

THE DEFENDANT: But the dis - - dismissal will limit my rights to--

THE COURT: My - - I'll tell you what the dismissal is. The Prosecutor dismissed because he does not chose to prosecute. There is no evidence - - he doesn't want to go with the case because he doesn't have the evidence. There's no acquittal. It's been dismissed. If - - if you're charged again, then you can - - your attorney will make motions - - appropriate motions. If you want to proceed in a civil matter, or whatever--

THE DEFENDANT: Or cri- - in criminal matter--

[10]

THE COURT: --or a complaint, you have to talk to your attorney and he'll advise you what to do--

THE DEFENDANT: So we--

THE COURT: --I cannot advise you what to do--

MR. WAGNER: Mr. Chow--

THE DEFENDANT: Well it was - - did not dismiss all the possibility, right?

MR. WAGNER: No, it's just this case.

THE DEFENDANT: Okay.

MR. WAGNER: Thank--

Pretrial Transcript of Dismissal, July 20, 1993

THE DEFENDANT: Okay, thank you, your Honor, that's - - that's good--

THE COURT: Yeah, it's just that this case is closed now.

MR. WAGNER: Thank you, your Honor.

THE DEFENDANT: Okay. Then we have the right - -.

(At 9:42 a.m. proceedings concluded)

[11]

C E R T I F I C A T E

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I certify that this transcript, consisting of 11 pages is a complete, true and correct transcript of the proceedings and testimony taken in this case to the best of my ability on July 20, 1993.

January 20, 1994

/s/_____

Clema D. Pond, CER 0901
11131 S. Wayne Road
Romulus, Michigan 48174

APPENDIX H

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHI-MING CHOW, Plaintiff,	)	
vs	)	**Case No: 94-422740-NZ**
VAN BUREN TOWNSHIP, K-MART COPORPORATION, JILL FEHRENBACH, FRED SWEET, MATTHEW CURTIS, PHIL WAKEFORD JEAN JOHNSON, and MARK PERKINS, Jointly and Severally Defendants.	)	Judge: Hon. Cynthia D. Stephens

JURY TRIAL DEMANDED
JURY FEE PAID

David H. Raaflaub P29975
Attorney for Plaintiff
400 West Washington Street, Suite 700
Ann Arbor, Michigan 48103
(313) 668-0900

AMENDED COMPLAINT

F. Peter Blake (p26531)
Attorney for K-Mart
535 Griswold - 1432 Buhl Bldg.
Detroit, MI 48236
(313) 961-7321

Michael J. Watza (P38726)
Attorney for VAN BUREN TOWNSHIP,
Matthew Curtis, Phil Wakeford,
Jean Johnson and Mark Perkins
33900 Schoolcraft
Livonia, MI 48150
(313) 261-2400

FIRST AMENDED COMPLAINT

NOW COMES CHI-MING CHOW by and through his attorney, DAVID H. RAAFLAUB, and by way of Complaint against Defendants, VAN BUREN TOWNSHIP, K-MART CORPORATION, JILL FEHRENBACH, FRED SWEET, MATTHEW CURTIS, PHIL WAKEFORD, JEAN JOHNSON, and MARK PERKINS, says:

NO PRIOR ACTION STATEMENT: THERE IS NO PRIOR ACTION BETWEEN SAID PARTIES IN THIS COURT ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE.

I. PARTIES:

A. CHI-MING CHOW is plaintiff and customer of defendant K--Mart and object of. Defendant Van Buren Township's and their agents', MATTHEW CURTIS, PHIL WELLFORD, JEAN JOHNSON, and MARK PERKINS,

efforts to arrest and prosecute Chi-Ming Chow on false shoplifting charges among other things.

B. JILL FEHRENBACH, Defendant, was at relevant times, an employee of K-Mart and false accuser, among other things, of Chi--Ming Chow.

C. FRED SWEET, Defendant, was at relevant times, an employee of K-Mart and false accuser, among other things, of Chi--Ming Chow.

D. MATTHEW CURTIS, Defendant, prosecuted the false charge of shoplifting, for Van Buren Township and K-Mart. He prosecuted knowing that the charges were false, and would not drop charges because Chi-Ming Chow would not sign a release of liability of K-Mart.

E. FRED SWEET, Defendant, was at relevant times, an employee of K-Mart and false accuser, among other things, of Chi--Ming Chow.

F. MARK PERKINS, Defendant, was at all relevant times, police director of Van Buren Township and participated in the destruction of evidence.

G. PHIL WAKEFORD, Defendant, was at all relevant times employed by Van Buren Township, and arrested without warrant Chi-Ming Chow because he would not sign a waiver of liability of K-Mart Corporation.

H. JEAN JOHNSON, Defendant, was at all relevant times an employee of Van Buren Township, who destroyed evidence in the case against Chi-Ming Chow.

II. RESIDENCE OF DEFENDANTS:

All defendants are residents or have or had a place of business at all relevant times in Wayne County.

III. GENERAL INFORMATION

1. Plaintiff Chi-Ming Chow went into Defendant K-Mart Corporation store to purchase shoes on August 12, 1989.

2. Plaintiff selected some shoes and went to counter and paid for them.

3. Defendants Jill Fehrenback and Fred Sweet falsely accused Plaintiff of stealing shoes.

4. Plaintiff was arrested and prosecuted by Defendant Van Buren Township and its employees and prosecutor acting on their behalf.

5. During the legal proceedings, Defendants Jill Fehrenback and Fred Sweet offered false testimony under oath.

6. Defendant Matthew Curtis knowingly submitted false evidence in court.

7. Defendants K-Mart, JILL FEHRENBACK, and FRED SWEET maliciously instituted said criminal action against Plaintiff falsely alleging theft.

6. Said action was dismissed.

7. Said malicious prosecution caused a nervous breakdown of Plaintiff, loss of friends, loss of mental tranquility and other grievance mental distress as well as causing Plaintiff to retire early from his profession as teacher of mathematics in college.

8. Said malicious prosecution caused great expense to Plaintiff.

9. During said malicious prosecution, Defendant

conspired to destroy evidence exculpatory to Plaintiff.

10. Defendant's aforesaid actions were malicious, intentional, and outrageous.

11. Defendants in their unlawful actions toward Plaintiff

were motivated by prejudice toward Plaintiff's national origins.

12. Defendants deprived Plaintiff of his civil rights.

13.Defendants K-MART, JILL FEHRENBACK and FRED SWEET published defamatory statements about Plaintiff accusing him of a crime.

14. Said defamatory statements were untrue.

15. Defendants knew said statements were untrue.

16. Said defamatory statements damaged Plaintiff causing him humiliation, anger, distress, mental stress, financial loss and other damages.

17. Plaintiff is entitled to actual damages, compensatory damages and exemplary damages measured upon the net worth of Defendants, which at minimum amounts to One Hundred Million Dollars ($100,000,000.00).

18. Reallege paragraph 3, 13 through 16.

COUNT 2 MALICIOUS PROSECUTION

19. Realleg paragraph 1 through 10.

COURT 3 CONSUMER PROTECTION ACT VIOLATION

20. Realleg paragraphs I through 3.

21. In their false reports of theft, Defendants Fehrenback, Sweet and K-Mart misrepresented their goods by

falsely claiming that Plaintiff's worn shoes which he owned were K-Mart's new shoes, violating M.S.A. 19.418(1)-(22) entitling Plaintiff to damages and attorneys fees.

CIVIL RIGHTS VIOLATIONS

22. Reallege paragraphs 1-17.

23. Defendants in the actions violated plaintiff's civil rights to due process, freedom from unreasonable search and seizure, and violated M.S.A. 28.343.

Wherefore, Plaintiff CHI-MING CHOW, by and through his attorney, David H. Raaflaub demand judgment against Defendants VAN BUREN TOWNSHIP, K-MART CORPORATION, JILL FEHRENBACH, FRED SWEET, MATTHEW CURTIS, PHIL WAKEFORD, JEAN JOHNSON, and MARK PERKINS, Jointly and Severally, actual damages, consequential damages, exemplary and/or punitive damages in proportion to defendant's asserts in an amount in excess of Ten Thousand Dollars, plus costs, interest and attorneys fees.

Dated: MARCH 1 1995.

/s/_____
David H. Raaflaub

APPENDIX I

STATE OF MICHIGAN

IN THE SUPREME COURT

CHI-MING CHOW, Plaintiff-Appellant,	)	
	)	Supreme Court No. 110961
	)	Court of Appeals No. 191046
vs.	)	Lower Court No. 94-422740-NZ
K-MART CORP.: VAN BUREN TOWNSHIP; JILL FEHRENBACH; FRED SWEET; MATTHEW CURTIS PHIL WAKEFORD : JEAN JOHNSON and MARK PERKINS. jointly and severally Defendant-Appellees.	)	

Gregory. L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, MI 48170
(734) 451-7772

MOTION FOR RECONSIDERATION, August 7, 1998

Christopher G. Manoiis (P-34811)
Attorney for Defendant-Appellees
535 Griswold - 1432 Buhl Bldg.
Detroit, MI 48226
(313) 961-7321

Dated: August 7, 1998

MOTION FOR RECONSIDERATION

CHI-MING CHOW, Plaintiff-Appellant, by and through his attorney, Gregory L. Gliha, move this Honorable Court, pursuant to MCR 7.313 (E) for a reconsideration of this Honorable Court's order denying Plaintiff-Appellant's delayed application for leave to appeal, and for their motion states as follows:

1) Plaintiff-Appellant's cause of action was summarily disposed of by order of the Wayne County Circuit Court on November 20, 1995.

2) Plaintiff-Appellant timely filed leave to appeal with the Michigan Court of Appeals on December 8, 1995.

3) That said Michigan Court of Appeals on or about July 8, 1997. affirmed the lower court's dismissal of Plaintiff-Appellant's cause of action without allowing oral argument in the case.

MOTION FOR RECONSIDERATION, August 7, 1998

4) That on or about July 28, 1997, Plaintiff-Appellant filed a Motion for Reconsideration with the Michigan Court of Appeals which was also denied on September 30, 1997.

5) Plaintiff- Appellant, on October 20, 1997 notified the Court Clerk by hand delivered letter of his intention to file a Late Application for Leave to Appeal which was due on October 21, 1997.

6) Plaintiff-Appellant on or about November 18, 1997, filed an application for leave to Appeal with this Honorable Court (MCR 7.302 (C) (3).

7) That this Honorable Court, on July 28, 1998. denied Plaintiff-Appellant's delayed application for leave to appeal for the reason that the Court was not persuaded that the question presented for review along with the facts of this case should not be reviewed by this Court MCR 7.302 (A) (1).

8) Plaintiff-Appellant, now files this motion to reconsider for the reasons set forth in the following brief.

WHEREFORE, Plaintiff-Appellant, Chi-Ming Chow, pray this Honorable Court reconsider his deaved leave to appeal and reverse the lower court's summary, disposition order.

MOTION FOR RECONSIDERATION, August 7, 1998

Respectfully submitted,

/s/_____
Gregory L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, MI 48170
(734) 451-7772

Dated: August 7, 1998

MOTION FOR RECONSIDERATION, August 7, 1998

Dated: August 7, 1998

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

The Plaintiff-Appellant, Chi-Ming Chow, states unto this Honorable Court that the above captioned case has important public value to the citizens of the State of Michigan. The facts surrounding the case present substantial issues of prosecutorial misconduct and a conspiracy to convict an innocent citizen as set forth in the attached exhibit (Plaintiff-Appellant's own responding letter to Honorable State Supreme Court Judges). In addition, several private organizations, including the United States Commission on Civil Rights and the Michigan Department of Civil Rights urges an investigation.

Additionally, oral argument was wrongfully denied by the Michigan Court of Appeals pursuant to MCR 7.214 (E) as being "not necessary". No additional reason was given for denying Plaintiff-Appellant the right to oral argument in such a complex case as set-forth in the original appeal.

Defendants unlawfully destroyed all the physical evidence to cover up their criminal activities that have no immunity. On April 8, 1998, the Ann Arbor News reported that in Seattle, Washington, Prosecutor Lynne Kaline was sued by Fletcher for her mistake made during a 1993 trial. She paid damages of $162, 500 for settlement in her case. The news reported that this case set a national precedent on law suits against prosecutors. (See exhibit in Plaintiff-Appellant's letter to your Honorable Judges.)

MOTION FOR RECONSIDERATION, August 7, 1998

For the above mentioned reasons, Plaintiff-Appellant therefore pray that this Honorable Court allow justice to be served and accept his delaved application for leave to appeal with oral argument.

Respectfully submitted.

/s/_____
Gregory L. Gliha
Dated: August 7, 1998

Gregory L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, MI 48170
(734) 451-7772

MOTION FOR RECONSIDERATION, August 7, 1998

August 6 1998

Chow v Kmart Corporation, et al

Michigan Supreme Court Case No. 110961

Dear Honorable Judges Mallett, Brickley, Cavanagh, Boyle, Weaver, Kelly, and Taylor:

My name Is Chi-Ming Chow, I am the Plaintiff-Appellate. I am writing this letter with fact and evidence to support for my attorney's Motion for Reconsideration. A complete copy of my "To Whom It May Concern" letter of September 14, 1993 with detail exhibits was submitted with my appeal paper to this Honorable Court In 1997. Exhibit numbers In this letter are in numerical order and are indicated on the bottom of the pages.

On July 28, 1998, this Honorable Court issued an order to deny my appeal because the Court was not persuaded that the question presented should be reviewed by this Court. Therefore I would like to present the following new questions and answers to back up my Motion For Reconsideration:

1. Did my attorney followed court rules to file my appeal?

My answer: Yes. My attorney followed the court rules properly and file my appeal at this Honorable Court appropriately.

2. Should my appeal be denied?

My answer: No. My appeal should not be dented because I have all the evidence and fact to back up my appeal. If my appeal is denied, it will violate our National Constitution which assures equal justice and equal protection of the laws for all citizens born or naturalized tn the United States.

3. Your Honors, how often do you wear new cloths or new shoes and go shopping? If in the store, a salesperson falsely accuses you stealing their new cloths or new shoes, will it be easy for you to prove your innocence?

My answer: No. It will be very difficulty for you to prove your innocence because they have their false eye-witness and physical evidence. Your life can be ruined forever.

4. In 1989, a Kmart saleswoman, a formal student of my school, falsely accused that my old shoes on my feet were Kmart 's new shoes. Her signed Kmart report states that I try on a pair of new shoes and then walk toward the front checkout. (Please see attached Exhibit 1.) Please notice that the distance between the shoe shelf and front checkout is only 75 steps. I am now again attaching a copy of my court verified photo of physical evidences. Please look at the picture of my old shoes which were on my feet when I was arrest. A picture is worth a thousand words. It shows that my old shoes had deep wears and rain splashed mud all around. Will any one buy a pair of new shoes which looked like my old shoes? Can any one change a pair of news shoes into the condition of my old shoes by

walking 75 steps in Kmart polished floor?

My answer: No. Only a fool or a mentally ill person will buy a pair of worn off and muddy old shoes as new shoes. No one can change a pair of new shoes into the condition of my old shoes by walking 75 steps inside of the *Kmart* store.

5. Did the security and police have a warrant to arrest me and falsely imprison me?

My answer: No. They had no warrant. If by their own eye-witness, they should arrest the Kmart saleswoman for making false accusation.

6. Did the prosecutor know it was a false accusation, a false arrest and a false imprisonment?

My answer: Yes. In fact, he told my attorney before the pre-trial that the shoes looked bad and he wanted to drop the charge without punishing the Kmart. I refused such unfair offer for my ruined life. (For detail, please refer to my "To Whom It Nay Concern" letter.)

7. The prosecutor and Kmart then used perjury, false evidence and conspiracy to convict me, an innocent citizen. (For detail, please refer to the attached photo copy and my "To whom It May Concern" letter.) Do the prosecutor and Kmart have the duty and freedom to knowingly and intentionally commit such felonious criminal activities?

My answer: No. Of course not. No prosecutor or store has the duty and freedom to knowingly and intentionally commit any crime. When 8 prosecutor knowingly and intentionally commits a crime, he is no longer a law official but a criminal.

8. Does a prosecutor have the immunity and discretion to knowingly and intentionally to commit 8 crime?

My answer: No. Immunity applies to an official's liability for his performance of his duty. Discretion is an official's freedom of choice based on honesty, fairness and law. No official has the duty and freedom to knowingly and intentionally to commit a crime. No one is above the law.

In the well know Rodney King case in Los Angels and Malice Green case in Detroit, policemen and the cities were punished by our law. The policemen in these two cases were actually performing their duties when they over reacted and committed the crime. In my case, the Kmart and the prosecutor knowingly and intentionally committed felonious crime to avoid being sued for damage.

9. Is there a precedent that a prosecutor can be sued and has to pay for the damage made by his/her mistake?

My answer: Yes. On April 8, 1998, The Ann Arbor News reported that in Seattle, Washington, deputy prosecutor Lynne Kalina was sued by Fletcher for her mistake made during a 1993 trial. She paid the damage

of $162,500 for settlement in her case. The news reported that this case set a national precedent on law suits against prosecutor. (Please see the attached Exhibit 5, a copy of this news clip.)

In my case, the prosecutor and Kmart employees committed felonious crime because they convicted an innocent citizen by their perjury, false evidence and conspiracy. They are criminals. They must be punished by our law.

10. In 1991, Honorable Judge Battaii reversed the unjust verdict for ineffective assistance of counsel. Her Honor states that there were clearly worn off signs and dirt from outside of the store on Defendant's shoes and the burden of the contrary statement is beyond a reasonable doubt. Her Honor also states that It was absurd that the defendant's counsel allowed the contradictory evidence in the trial without his objection. So her Honor ordered a new trial.' What does her Honor's eye-witness testimony mean for my case?

My answer: Her Honor's eye-witness testimony confirms the prosecutor and Kmart's perjury, false evidence and conspiracy to convict me, an innocent citizen. They have committed a felonious crime. (Note, the prosecutor admitted on court paper that he stipulated with my trial counsel before the trial to allow them to use their false evidence in court without my trial counsel's objection. This is clearly a conspiracy. (For detail, please refer to my "To Whom It May Concern" letter in my appeal paper.)

MOTION FOR RECONSIDERATION, August 7, 1998

11. After the unjust verdict was reversed and a new trial was ordered, the prosecutor then filed his frivolous appeal to buy time. He and the police department willfully neglected their duties, maliciously destroyed all the physical evidences seized by the court without a court order to cover up their crimes. What does their act mean?

My answer: Willful neglect of duty, malicious destruction of physical evidence, coverup and obstruction of justice are all criminal activities.

12. When the unjust charge was dismissed in 1993 without a new trial, I filed my criminal complaint and civil complaint which was based on my criminal complaint.

For the criminal complaint, I essentially asked the defendants to prosecute themselves. All they have done so far is to cover up the crime, obstruct the justice and continuously violate my constitutional rights and civil rights. They are now protecting the criminals from being prosecuted. They are turning our law upside down in my case. I have also filed my complaint at both U.S. Department of Justice and Federal Congress Judicial Committees. So my criminal complaint is continuing and unresolved.

For the civil case, District Court Judge refused to review the court verified video tape which contained important eyewitnesses, large and clear physical evidences and court documents. District Court Judge fulfilled the defendants' wishful thinking that they

unlawfully destroyed all the physical evidence and then argued with their lies in court. District Court Judge also refused to allow my attorney to make any deposition or discovery. District court Judge then dismissed the case without a trial. The dismissal is clearly unfair and unjust. When I filed my appeal, District Court Judge did not transfer all my court papers including the photos of physical evidence to the Court of Appeals. This is against the law and court rules. So I submitted extra copies of photos of physical evidence and case papers to the Court of Appeals. However, the Court of Appeals returned all my photos of physical evidence and then dismissed my appeal without a hearing. This is again unfair and unjust. So I filed my Appeal at this Honorable Court. Now this Court also dismissed my appeal without a hearing. This is why I am now filing my Motion for Reconsideration. What is the result of all these unfair dismissals?

My answer: The result is that the justice has not been served. My constitutional rights and civil rights to have equal justice and equal protection of the laws have been violated repeatedly and continuously.

13. All my Honorable Governor and Representatives bare backed up my complaint. Both Michigan Civil Rights Commission and U.S. Civil Rights Commission have also supported my complaint and sent their recommendation and referral for my complaint to the U.S. Department of Justice. I am now attaching copies of Honorable State Senator Smith's letter, Michigan Civil Rights Commission's letter and

U.S.. Civil rights Commission's letter for your Honors' reference. (Please see attached Exhibits 2, 3 and 4.) What do their letters mean?

My answer: It means that any honest people, regardless he/she is a law expert or not, knows the injustice of my case by looking at the physical evidence and court document. My case is actually a very simple case. It lasts so long for so many years because of the injustice caused by dishonest and unfair law officials who have no respect to our constitution and law.

14. What is my hope to get the justice served?

My answer: I have confidence in our constitution and law. I only need good and honest Judges who keep their oaths to support our constitution. In 1997, former U.S. Department of Justice Chief Kahoe was punished by our law for his malicious destruction of evidence, coverup and obstruction of Justice in the 1992 Cabin case of Ruby Ridge, Idaho. If a FBI Chief has no immunity for his crime and can be punished by our law, so can state law enforcement officials be punished by our law for their malicious destruction of physical evidence, coverup, obstruction of justice and violation of my constitutional rights and civil rights. I shall never give up my effort to get the justice served.

The news media have already reported my case to the public when the unjust charge was dismissed in 1993. People are waiting for the result of my complaint. I

> am writing this letter to let your Honors know all the criminal activities and injustice in my complaint, this letter will be on the court record and eventually be also sent to the news media. Someday, this unusual and extreme Injustice of my case in which the law enforcement is turning our law upside down, maybe even be made nationally known. This may alert the public to correct It so that people can get more protection in their dally life.

In conclusion, my life has been ruined by the crimes and injustice of this case. I have lost my respect and human dignity from all the people who have heard my case from the news media. I need your Honors' fairness to get the justice served for my case. In less than two years, it will be the 21st century. Nowadays, our Honorable President, Congress and public, all stress eliminating racial prejudice, racial discrimination and racial hatred. If your Honors knowingly allow this extreme injustice of my case to exist in Michigan Judicial history, it will damage the reputation of Michigan as a great state. One fly can spoil a whole bowl of delicate soup. I hope your Honors will do your duties based on honesty, fairness and law to get the justice served for the victim of crime and keep Michigan as a great state.

Very truly yours,

/s/_____

Chi-Ming Chow, Retired Mathematics Teacher, Oakland Community College, Michigan.

c.c.: Attorney Gliha

News media and all other concerned.

MOTION FOR RECONSIDERATION, August 7, 1998

(Statement Form from Kmart)

BEST AVAILABLE COPY

K mart CORPORATION
Loss Prevention Department

SPECIFIC OFFENSE: RETAIL FRAUD 2ND DEGREE

CASE:

STATEMENT FORM

STATEMENT OF	ADDRESS	PHONE	AGE AND DOB
JILL FEHRENBACK	2095 RAWSONVILLE BELLEVILLE MI	485-8510	21-01-17-68
CONNECTION W/CASE	**WHERE TAKEN**	**DATE AND TIME**	
WITNESS	SHOE DEPT.	8-13-89	1:00 PM

=> Jill A. Fehrenbach witnessed Mr. Chiming Chow Try on a pair of workshoes Sold in The Footwear Dept. Then he walked out of The Dept. with the new shoes still on his feet. He left his old shoes in dept on the shelf where the shoes he took are located. Mr Chow Then walked toward the Front checkout with the new shoes still on.

CASE OF CHOW, CHI MING

WITNESS

The above statement is the truth to the best of my knowledge. I have made the above statement of my own free will and accord without any promise of immunity or reward and without any force or duress.

SIGNED: Jill A Fehrenbach
ADDRESS: 823 Green Rd #2
CITY: Ypsilanti ZIP: 48198
DATE: 8-12-89 TIME: 10:00

CODE 94-48-C—Pads-20—(Rev. 1/84)—K—Litho in U.S.A.

Exhibit 2-1

MOTION FOR RECONSIDERATION, August 7, 1998

SENATOR ALMA WHEELER SMITH
STATE OF MICHIGAN

November 29, 1995

The Honorable Frank J. Kelly
Attorney General, State of Michigan
Law Building, 7th Floor
525 W. Ottawa
P.O. Box 30212
Lansing, MI 48913

Dear Mr. Kelly:

It has been brought to my attention that one of my constituents, Mr. Chi-Ming Chow, has brought his case to the attention of the Department of Attorney General's Criminal Division. This is a matter of the utmost importance to Mr. Chow and a cause that he has been pursuing for a very long time.

I had the opportunity to attend a meeting with Mr. Chow, his lawyer and Robert Ianni, Assistant in Charge of the Criminal Division. From the evidence presented, it seems to me that Mr. Chow has been egregiously wronged and it is understandable that he so steadfastly pursues this matter. Regaining one's sense of dignity and self-esteem after such an unpleasant episode is important; vindication allows us to put instances of injustice behind us and resume our lives with faith in our system intact.

I will greatly appreciate your attention to his concerns and am confident that your office will give him whatever assistance it

is in your power to provide.

Thank you for your consideration of this request.

Sincerely,

/s/_____
Alma Wheeler Smith
State Senator, 18th District

AWS/ms

Exhibit 2

MOTION FOR RECONSIDERATION, August 7, 1998

CITY OF ANN ARBOR, MICHIGAN
HUMAN RESOURCES DEPARTMENT

CITY OF ANN ARBOR, MICHIGAN
220 E. Huron, Suite 340,
P.O. Box 8647,
Ann Arbor, Michigan 48107
Phone: (313) 994-2803 Fax: (313) 994-2590

April 21, 1997

Mr. Chi-Ming Chow
2580 Holmes Rd #16
Ypsilanti, MI 48198-4217

RE: Civil Rights Violations

Dear Mr. Chow:

It was my pleasure meeting with you and your attorney on April 18, 1997 to discuss the unfortunate experience you had with the law enforcement agencies in the State of Michigan.

After a review of your video tape and discussion of the evidence you presented, I strongly recommend that you file formal complaints with the following agencies:

U.S. Justice Department
Civil Rights Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001
Telephone: (202) 514-4224

MOTION FOR RECONSIDERATION, August 7, 1998

U.S. Civil Rights Commission
624 9th Street, N.W.
Washington, DC 20525
Telephone: (202) 376-8177

Your letter dated April 3, 1997, addressed to the Michigan Attorney General's office clearly outlined your concerns. I suggest that you submit that letter to both agencies.

If I can be of further assistance, please contact me.

Sincerely,

/s/_____
Raymond E. Chauncey
Human Rights Coordinator

cc: Joseph H. Wagner

MOTION FOR RECONSIDERATION, August 7, 1998

Article from Ann Arbor News - 4/8/98

The report covers vascular plants – conifers, ferns and flowering plants – but not most at risk," Brian Boom of the New York Botanical Garden said in a statement.

BEST AVAILABLE COPY

WORLD IN BRIEF

SEATTLE
Carpenter vindicated for false arrest

A carpenter who was wrongfully arrested and jailed has accepted a $162,500 settlement in the case that set a national precedent on lawsuits against prosecutors.

Fletcher, of Auburn, Wash., sued deputy prosecutor Lynne Kalina after he was arrested in 1993 and charged with stealing a computer from a Seattle school.

To obtain the arrest warrant, Kalina had sworn that the carpenter – who had been hired to install glass partitions at the school – had no legitimate reason to be inside it and that he later tried to sell the computer, an allegation that no witness supported. Kalina said she misread police reports.

INDIANAPOLIS
Police to search schools for guns

Following a rash of gun arrests, police will begin random searches for weapons in Indianapolis Public Schools buses and elementary schools. The district, which includes most of the city's roughest neighborhoods, has conducted similar searches of middle and high school students.

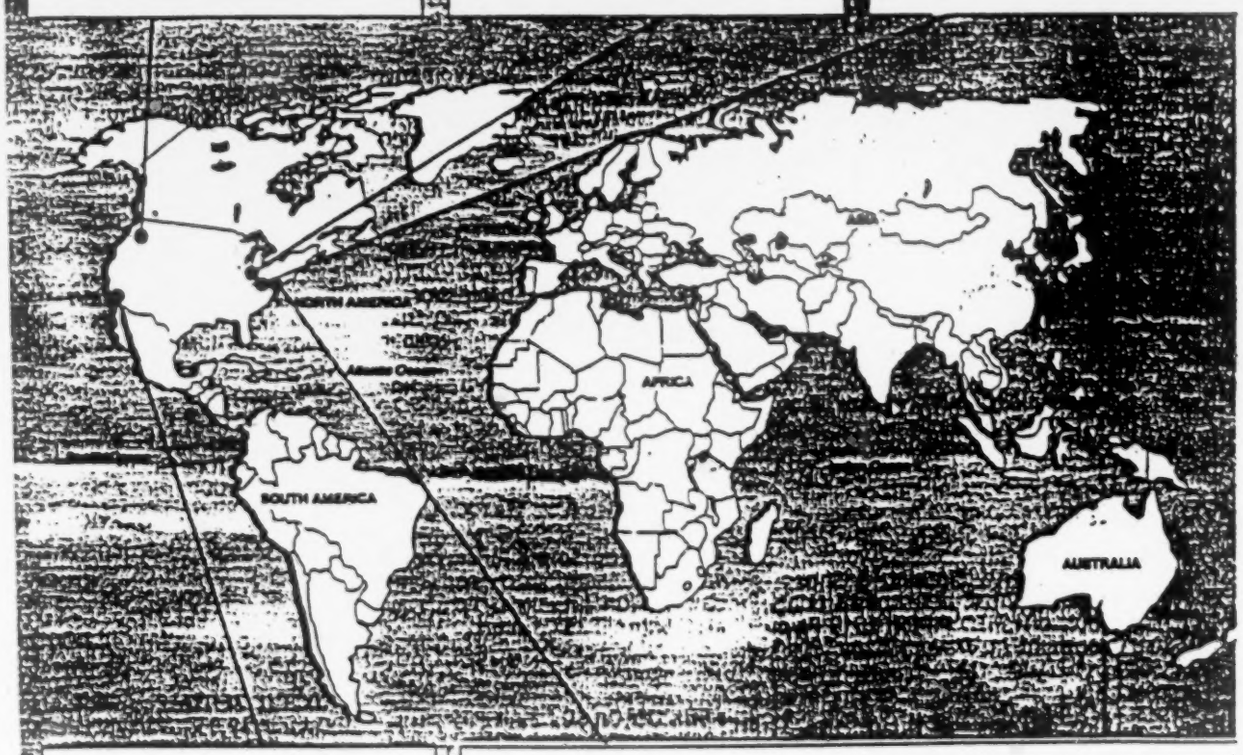
Two 8-year-old boys were arrested last month after carrying handguns to school. One student said he brought the gun to school for protection from another student. The other student allegedly pointed a gun at a classmate because she was teasing him about his ears. A third student was arrested earlier in the school year with a gun.

CINCINNATI
Larry Flint charged again for obscenity

Once again, it's the People vs. Larry Flynt. The Hustler magazine publisher, who beat an obscenity rap once before, was charged again Tuesday. This time, it's for videos.

Flynt and his brother, Jimmy, were indicted on 15 felony counts, including selling obscene videotapes to a 14-year-old boy, engaging in a pattern of corrupt activity and conspiracy to engage in a pattern of corrupt activity.

Last year, Flynt opened the only sex shop in town. Prosecutors did nothing – until a 14-year-old boy allegedly bought an obscene video in Flynt's store, sold it to a friend and bragged about the purchase. The boy then went to police.



CALIFORNIA WASHINGTON

MOTION FOR RECONSIDERATION, August 7, 1998

July 6, 1997

Chi-Ming Chow
2580 Holmes Road, No. 16
Ypsilanti, MI 48198-4217

Dear Mr. Chow:

The United States Commission on Civil Rights recently received your complaint.

The Commission was established to conduct studies, hold hearings, issue reports, and serve as a national clearinghouse for civil rights information. As such, the Commission has no authority to provide direct remedial assistance, or offer an opinion as to the soundness of individual allegations.

In order to be helpful, we have forwarded your complaint to:

U.S. Department of Justice
Civil Rights Division
10t^{h} and Constitution Avenue, NW
Washington, DC 20530

This agency is authorized to help resolve the problem you described. We have requested that the agency notify both you and the Commission in writing concerning all actions taken to resolve your complaint. Should you need to communicate further concerning this matter, please contact the referral agency at 202-514-215 I.

We appreciate the concern and the circumstances that prompted you to write to the Commission.

MOTION FOR RECONSIDERATION, August 7, 1998

Sincerely,

/s/_____
FREDERICK D. ISLER
Assistant Staff Director
Office for Civil Rights Evaluation

Exhibit 4

APPENDIX J

STATE OF MICHIGAN

IN THE COURT OF APPEALS

CHI-MING CHOW,
Plaintiff-Appellant,

v.

K-MART CORPORATION; VAN BUREN TOWNSHIP; JILL FEHRENBACH; FRED SWEET; MATTHEW CURTIS; PHIL WAKEFORD; JEAN JOHNSON and MARK PERKINS
jointly and severally,
Defendants-Appellees
_____/

Court of Appeals No. 191046
Wayne County Circuit No. 94-422740-NZ

Gregory L. Gliha (P42929)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, MI 48170
(313) 451-7772

Christopher G. Manolis (P34811)
Attorney for Defendant-Appellees
535 Griswald-1432 Buhl Bldg.

MOTION FOR RECONSIDERATION, July 28, 1997

Detroit, MI 48226
(313) 961-7321

_____/

MOTION FOR RECONSIDERATION

CHI-MING CHOW, Plaintiff- Appellant, by and though his attorney, Gregory L. Gliha, move this Honorable Court pursuant on MCR 7 313(E) for a reconsideration of this Honorable Court's Order denying Plaintiff-Appellant's Application for Leave to Appeal, and for their motion states as follows:

1)Plaintiff-Appellant's cause of action was dismissed on summary disposition in Wayne County Circuit Court, Third Judicial Circuit, on November 20, 1995.

2)Plaintiff-Appellant filed a timely Claim of Appeal on or about December 8, 1995.

3)Plaintiff-Appellant retained new counsel who filed a Supplemental Brief on August 30, 1996 which was denied by this Honorable Court.

4)Plaintiff-Appellant's Supplemental Brief was returned to counsel, including all copies and photographs of vital evidence in this cause of action.

5)Plaintiff-Appellant's counsel had personally viewed the lower court file prior to transfer to the Court of Appeals and found it deficient of photographs, it contained misplaced case documents from other cases and was generally in disarray.

MOTION FOR RECONSIDERATION, July 28, 1997

6)On May 22, 1997, this Honorable Court informed Plaintiff-Appellant that pursuant to MCR 7.2t4(E} , the Court could review said appeal without oral argument.

7)On or about June 24, 1997, Plaintiff-Appellant personally reviewed said appeal file and found no evidence of photographic evidence present.

8)On or about June 27, 1997, Plaintiff-Appellant notified this Honorable Court in writing of the deficiency of said appeal file (Exhibit 1).

9)On July 8, 1997, this Honorable Court DENIED Plaintiff-Appellant's appeal in affirming the lower court's summary disposition.

10)Plaintiff-Appellant now files this motion to reconsider for the reasons set-forth in the following brief.

WHEREFORE, Plaintiff-Appellant, Chi-Ming Chow, pray this Honorable Court reconsider his leave to appeal and reverse the lower court's summary disposition order.

Dated:7/28/97

Respectfully submitted,

/s/_____

Gregory L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, Mi 48170
(313) 451-7772

MOTION FOR RECONSIDERATION, July 28, 1997

STATE OF MICHIGAN

IN THE COURT OF APPEALS

CHI-MING CHOW, Plaintiff-Appellant, v. K-MART CORPORATION; VAN BUREN TOWNSHIP; JILL FEHRENBACH; FRED SWEET; MATTHEW CURTIS; PHIL WAKEFORD; JEAN JOHNSON and MARK PERKINS jointly and severally, Defendants-Appellees /	**Court of Appeals No. 191046** **Wayne County Circuit No. 94-422740-NZ**

Gregory L. Gliha (P42929)
Attorney for Plaintiff-Appellant
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(313) 961-7321

/

MOTION FOR RECONSIDERATION, July 28, 1997

PLAINTIFF-APPELLANTS BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

The Appellant in the case at bar is review of all the evidence he presented in the lower court before disposition of his claim. There are serious questions as to the file content reviewed in this matter.

From the onset of this appeal, there was evidence that the lower court file was not complete. Different case documents were found by original appellate counsel of the Plaintiff-Appellant when the file was reviewed at the Circuit Court clerk's office.

Photographs of exculpatory evidence were given to the trial court via motion and were returned to plaintiff without explanation. These same photographs (hereby attached to this motion) were attached to the Plaintiff's Mediation Summary, along with the Supplemental Brief which was denied and returned to Plaintiff-Appellant's counsel.

Attached to said motion is a letter written to this Honorable Court which details the lack of content of the lower court file. This letter may not have been reviewed, along with the phonographs, before this Honorable Court made it's decision

.

Plaintiff is entitled to present a full and accurate trial court record no this Honorable Court prior to disposition of his cause of action. This is evidently lacking in the file at present and Plaintiff-Appellant pray this Honorable Court allow him sufficient time to ensure the content of the file on appeal.

MOTION FOR RECONSIDERATION, July 28, 1997

Dated:7/28/97

Respectfully submitted,

/s/_____

Gregory L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, Mi 48170
(313) 451-7772

MOTION FOR RECONSIDERATION, July 28, 1997

STATE OF MICHIGAN

IN THE COURT OF APPEALS

CHI-MING CHOW, Plaintiff-Appellant, .v. K-MART CORPORATION; VAN BUREN TOWNSHIP; JILL FEHRENBACH; FRED SWEET; MATTHEW CURTIS; PHIL WAKEFORD; JEAN JOHNSON and MARK PERKINS jointly and severally, Defendants-Appellees _____/	**Court of Appeals No. 191046** **Wayne County Circuit No. 94-422740-NZ**

Gregory L. Gliha (P42929)
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P. O. Box 5388
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_____/

MOTION FOR RECONSIDERATION, July 28, 1997

NOTICE OF HEARING

TO: CHRISTOPHER G. MANOLIS
ATTORNEY FOR DEFENDANT-APPELLEES
535 GRISWALD-1432 Buhl BLDG.
DETROIT, MI 48226

PLEASE TAKE NOTICE that there will be brought on for hearing before the Michigan Court of Appeals on Tuesday, August 12, 1997 a Motion for Reconsideration.

Dated:7/28/97

Respectfully submitted,
/s/_____
Gregory L. Gliha (P-42919)
Attorney for Plaintiff-Appellant
P. O. Box 5388
Plymouth, Mi 48170
(313) 451-7772

MOTION FOR RECONSIDERATION, July 28, 1997

STATE OF MICHIGAN

IN THE COURT OF APPEALS

CHI-MING CHOW, Plaintiff-Appellant, K-MART CORPORATION; VAN BUREN TOWNSHIP; JILL FEHRENBACH; FRED SWEET; MATTHEW CURTIS; PHIL WAKEFORD; JEAN JOHNSON and MARK PERKINS jointly and severally, Defendants-Appellees _____/	**Court of Appeals No.** v. **191046** **Wayne County** **Circuit No.** **94-422740-NZ**

Gregory L. Gliha (P42929)
Attorney for Plaintiff-Appellant
P. O. Box 5388
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Christopher G. Manolis (P34811)
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Detroit, MI 48226
(313) 961-7321

_____/

PROOF OF SERVICE

Tina Gaiicki, being first duly sworn, deposes and says that on the 28th day of July 1997 she mailed by regular mail a true copy of this *Motion for Reconsideration, Brief in Support of Motion for Reconsideration and Notice of Hearing* clearly addressed to:

Christopher G. Manolis
Attorney for Defendant-Appellees
535 Oriswald-1432 Buhl Bldg.
Detroit, MI 48226

Postage fully prepaid and deposited said envelope in the Untied States mail receptacle located at Plymouth, Michigan.

/s/_____
Tina Galicki

Subscribed and sworn to before me
this 29th day July, 1997.

/s/_____
Notary Public, Wayne County Michigan
My Commission Expires:
9-16-99

Certified Mail No. P 200 524 042

Honorable Judges MJ Cavanagh
Doctoroff MM
Teeple Donald A
Michigan Court of Appeals
109 West Michigan Avenue
P.O. Box 30022
Lansing Michigan, 48909-7522

Chi-Ming Chow (Mr.)
2580 Holmes Road, No. 16
Ypsilanti, MI 48198-4217
(313) 484-0294

June 27, 1997

Re: #191046 Chi-Ming Chow V Van Buren Township
Item No. 17 L/CRT # 94422740

Dear Honorable Judges MJ Cavanagh
Doctoroff MM
Teeple Donald A:

My name is Chi-Ming Chow. I am the appellate of this case. One of my attorneys, Mr. Jon Luker, has advised me that it is not against the law for me to write a letter to the Judges. Our constitution also gives me the freedom of speech for my own case. Therefore I am writing this letter to inform your Honors that all my court papers attached with photos of physical evidence exhibits from the lower court were missing at Michigan Court of Appeals. This is a coverup and violation of the law. Please let me state this fact as follows:

1. My attorney, Mr. Gliha, has informed this Honorable

Court in my appeal paper that the lower court has no negative films of the pictures of the physical evidence of my case. It is impossible for the lower court to produce colored photo copies of the physical evidence for the Appeal Court to review.

2. On May 22, 1997, this Honorable Court advised that this appeal is being considered for a decision WITHOUT ORAL ARGUMENT pursuant to MCR 7.214(E).

3. I have asked Attorney Gliha to accompany me to the Appeal Court to review the content of my appeal file since last year. This was never carried out. So on June 24, 1997, I went to Michigan Court of Appeals in Detroit and reviewed the content of the file of my appeal. Here is what I have found in the court file:

At least the following three original papers filed in Circuit Court (lower court) are missing at Michigan Court of Appeals.

1) Exhibits Supplemental To Complaint, filed by Attorney Raaflaub on April 6, 1995. It contained a copy of my "To Whom It May Concern" letter of September 14, 1993. This letter is a comprehensive summary of my case. It was attached with all essential court documents and photos of physical evidence exhibits.

2. Mediation Summary, filed by Attorney Gliha on September 28, 1995. This document also contained important court papers and photos of physical evidence exhibit.

3. Motion for Reconsideration with my open letter to Judge Stephens, filed by Attorney Gliha on October 19, 1995.

This document also contained photos of physical evidence exhibit. It also pointed out the errors made by the defendants and the court.

All these three missing papers contained important information such as eye-witnesses' testimonies, photos of physical evidences, information of court papers proved the defendant's false accusation, false arrest, defamation, malicious prosecution, perjury, false evidence, conspiracy, wilful neglect of duties, contempt of court order, malicious destruction of physical evidence seized by court without a court order, coverup, obstruction of justice and violation of my constitutional rights.

4. In Michigan Court Rule 7.210(A) (1), it states: "in an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony of other proceedings in the case appeal, and the exhibits introduced."

Now the above-mentioned three court papers filed in lower court were missing at the Appeal Court. It is clear that the lower court covered up the merit of my appeal. Lower court Judge Stephens knowingly violated the law and covered up the physical evidence and other important evidence by not sending important court documents to Appeal Court.

5. In the above-mentioned three missing documents, they pointed out the following facts:

1) In 1989, I was falsely accused by Kmart saleswoman, a formal student of my school, that I failed to pay a pair of my old shoes on my feet as Kmart's new shoes. When the prosecutor found out the condition of my old shoes which had deep wears and rain splashed mud all around, he

knew it was a false accusation. He tried to negotiate with me that he would drop the charge if I would waive all the civil liability against the Township and Kmart. I refused his unfair offer for my ruined life. I insisted that the criminals must be punished by out law. So the prosecutor and Kmart created a conspiracy to use perjury, false evidence in court without my trial counsel's objection to convict an innocent Chinese American in 1990.

2) I then filed my appeal at the Circuit Court. I won my appeal and the unjust verdict was reversed and a new trial was ordered in 1991.

3) The prosecutor knew that his old conspiracy, perjury and false evidence could not be used again in a new trial. So he filed his frivolous appeal for a false accusation of misdemeanor case at Michigan Court of Appeals to buy time. The prosecutor and police department then unlawfully destroyed all the physical evidence seized by court without a court order to cover up their criminal activities. Fortunately, I anticipated such unlawful destruction and had taken pictures and video tape were verified in Michigan Court of Appeals. (Five sets of photos and video tapes are still kept in this court.) Consequently, the prosecutor lost his appeal in 1993.

4) The unjust charge of my case was dismissed in the 34th District Court without a new trial on July 29, 1993.

5) On September 8, 1993, I filed my criminal complaint.

6) On July 28, 1994, I filed my civil complaint against Kmart, Van Buren Township and their employees.

7) in the civil court, Judge Stephens assisted the defendants by refusing to review the court verified photos of physical evidence. She also never gave my attorney a chance to show the video taped physical evidence, eye-witnesses and court documents. She refused my attorney's request for mediation, discovery and making depositions from witnesses. This, Judge Stephens fulfilled the defendants' wishful thinking that they unlawfully destroyed all the physical evidence and then argued by their lies with the help of the unjust judge. This was how my civil complaint was dismissed without a trial on 11-20-95 by Judge Stephens.

6. On December 8, 1995, I filed my appeal at Michigan Court of Appeals. Now the lower court covered up the above-mentioned facts by not sending all the important court papers to the Appeal Court as requested by law.

7. On September 3, 1996, Attorney Gliha filed a Supplemental Brief for appeal. This supplemental brief also included a completed coy of my "To Whom It May Concern" letter of September 14, 1993. As I stated before, it had all essential court documents and photos of physical evidence exhibits. However it was denied by the Appeal Court on October 8, 1996 and the brief were returned.

8. On October 28, 1996, Attorney Gliha then filed a Motion for Reconsideration for this Supplemental Brief with photos of physical evidence exhibit. This motion was also denied by the Appeal Court on December 11, 1996.

9. Thus, it is clear that all my original court papers in lower court which contained the photo copies of the physical evidence were missing at the Appeal Court. All my court papers filed at the Appeal Court with photos of physical evidence were denied by the Appeal Court. The result is that

there is no physical evidence at all in my file in Appeal Court. This result again fulfilled the defendants' wishful thinking that they unlawfully destroyed all the physical evidence to cover up their criminal activities and then let them argue by their lies in Appeal Court.

10. Now the Appeal Court issued an notice on May 22, 1997 that the assigned panel is considered by the court to make a decision without the oral argument. This means that my attorney may not even have a chance to tell the court the truth of our appeal and show the court the physical evidence at the hearing. This is completely unfair and unjust.

I have asked Attorney Gliha to file a motion and let your Honors know the truth of my case since the Court issued its notice of May 22, 1997 for a panel decision without oral argument. However, so far Attorney Gliha has not done so. Since the situation is quite urgent, this is why I am now writing this letter to your three Honorable Judges so that the truth of my case can be revealed before the court decision for my appeal is made.

I am now attaching a copy of my court verified photo copies of physical evidence for your Honors' reference. (Please see attached Exhibit Photo.) A picture is worth a thousand of words. It shows how the defendants used perjury, false evidence and conspiracy to harm an innocent citizen. It shows why the defendants unlawfully destroyed all the physical evidence to cover up their criminal activities. Since the lower court also refused to review my court verified sound and colored video tape, I am willing to send copies of this video tape to your Honors by your request. I would also hope that this Honorable Panel will allow an oral argument at the hearing so that my attorney can present the truth of my case to your Honors.

I would also like to use this opportunity to inform your Honors that on April 22, 1997, Michigan Civil Rights Commission official, Mr. Raymond E. Chauncey, recommended that I should filed a complaint against Michigan State Attorney General's office at both U.S. Department of Justice and U.S. Civil Rights Commission. On May 27, 1997, I have filed a complaint against Michigan Attorney General and his official at U.S. Department of Justice for their continuous coverup, obstruction of justice and violation of my constitutional rights. I have also contacted U.S. Civil Rights Commission. I am now also attach copies of my recent correspondence with Mr. Chauncey of Michigan Civil Rights Commission for your reference. (Please see attached Exhibit A.)

No one is above the law. We all know that immunity for public officials apples to their liability for their performance of their authority and duty. No public official has the authority or duty to commit crimes. An official committed criminal activities has no immunity. Former President Nixon was forced to resign because of a coverup in Watergate case. Former FBI Manager Kahoe was convicted in Idaho Cabin case for malicious destruction of evidence, coverup and obstruction of justice. Policemen in Rodney King case in Los Angeles and in Malice Green case in Detroit were sentenced to jail terms for their crimes. Immunity can not be abused for officials who committed crimes. I am very grateful that Michigan Civil Rights Commission has recommended that I should file my complaint against Michigan State Attorney General and his officials. When my criminal complaint is opened to the public and justice is final served, it will show how unfair and unjust in the current case.

I have sent a copy of this letter to Attorney Gliha and asked him to send copies of this letter to defendants.

In conclusion, our National Constitution assures equal justice and equal protection of the laws for all citizens born or naturalized in the United States. I sincerely hope that this Honorable Court will make its decision based evidence and fact with fairness and justice so that justice can be served.

Very truly yours,

/s/_____
Chi-Ming Chow

cc: Attorney Gliha

Supreme Court, U.S.
FILED
FEB 9 1999
CLERK

No. 98-1044

In The

Supreme Court of the United States

October Term, 1998

CHI-MING CHOW,

Petitioner,

vs.

VAN BUREN TOWNSHIP; K-MART CORPORATION; and JILL FEHRENBACH,

Respondents.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

RESPONDENTS K-MART CORPORATION AND JILL FEHRENBACH'S BRIEF IN OPPOSITION

CHRISTOPHER G. MANOLIS
Counsel of Record

BLAKE, KIRCHNER, SYMONDS, MACFARLANE, LARSON & SMITH, P.C.
535 Griswold – 1432 Buhl Bldg.
Detroit, Michigan 48226
(313) 961-7321

Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I.

Whether Petitioner has established a jurisdictional basis for the United States Supreme Court to consider his Writ of Certiorari given that the constitutional issues raised in his Writ were never presented to the State Court.

II.

Whether the manner in which the State Court dismissed, by way of summary disposition, Petitioner's claim for malicious prosecution did not violate the Equal Protection Clause of the Fourteenth Amendment as the State Court did not misapply the relevant law in dismissing Petitioner's cause of action and no violation of Equal Protection would exist even if a misapplication of State law did occur.

III.

Whether the State Court's dismissal of Petitioner's malicious prosecution claim by way of summary disposition did not violate the Due Process Clause of the Fourteenth Amendment as Petitioner was provided notice and opportunity to defend the summary disposition motion and there were no impediments on Petitioner's ability to appeal the State trial court's ruling.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents K-Mart Corporation and Jill Fehrenbach respectfully request that this Court deny the Petition for a Writ of Certiorari (hereinafter "Petition" or "Pet.") seeking review of the decision of the Michigan Court of Appeals and denial of an Application for Leave to Appeal by the Michigan Supreme Court.

OPINION BELOW

The decision of the Michigan Court of Appeals, Docket No. 191046 is reprinted in the Appendix to the Petition (hereinafter "Pet. App.") at pages 3a-4a. The Order of the Michigan Supreme Court, Docket No. 110961, denying Petitioner's Application for Leave to Appeal, is reprinted in the Appendix to the Petition at pages 1a-2a.

STATEMENT OF THE CASE[1]

This case arises from an incident which occurred on August 12, 1989, when Petitioner Chi-Ming Chow was

[1] Respondents object to Petitioner's Statement of the Case to the extent it contains Petitioner's arguments regarding the alleged unlawful conduct, malicious intent, etc., of the various parties named as Defendants in the State lawsuit, including Respondents herein. Respondents further objects to Petitioner's reliance on his self-serving correspondence, dated September 14, 1993, and addressed to "Whom It May Concern" (Pet. App. 25a-47a) as support for his assertion as to the alleged unlawful conduct of the Respondents and the other Defendants named in his State lawsuit.

arrested for stealing a pair of shoes from Respondent K-Mart Corporation. The particular K-Mart store is located in Van Buren Township, Michigan.

Respondent Jill Fehrenbach, an employee of K-Mart, observed Petitioner trying on a pair of work shoes and then walking out of the shoe department with the new shoes still on his feet. Petitioner placed his old pair of work boots on the shelf where the new boots had been located. Pet. App. 47a – foldout. Ms. Fehrenbach then contacted K-Mart security regarding Petitioner's attempted theft. Mr. Fred Swift, an employee in K-Mart's Loss Prevention Department, reported that when Petitioner came into the footwear department he tried on three pairs of shoes. Petitioner kept the third pair on his feet and only paid for the first two pairs. Petitioner was detained and the Van Buren Police Department was contacted. Petitioner was turned over to the police upon their arrival. Pet. App. 47a – foldout. When the Van Buren Police Department arrived, they investigated the incident by speaking to Mr. Swift and Petitioner. Following this investigation, the police took Petitioner into custody and brought Petitioner to the police station for the filing of formal charges. Pet. App. 95a – foldout.

Petitioner's criminal trial took place in the 34th District Court, Van Buren Township, Michigan, wherein he was convicted of larceny under One Hundred Dollars. Petitioner appealed his conviction to the Wayne County Circuit Court, which reversed the conviction and remanded the matter for new trial. However, it is important to note that the *sole* basis for the reversal and retrial was the Circuit Court's finding that Petitioner (as the criminal defendant) was denied a fair trial because of ineffective

assistance of counsel. The example cited was the failure by defense counsel to object to inadmissable evidence. Pet. App. 72a-76a. The Michigan Court of Appeals, in an unpublished Opinion dated June 1, 1993 (Docket No. 138701), affirmed the Circuit Court's finding of ineffective counsel and thereby remanded the case for a new trial. Pet. App. 85a-87a.

Following the remand for trial, the criminal proceedings were dismissed, by way of stipulation, for the sole reason that the subject matter of the criminal proceedings, i.e., the stolen work boots, were inadvertently disposed of by the Van Buren Police Department during the pendency of the appeal. Pet. App. 92a-93a. The Police Department disposed of the work boots simply because they believed the criminal proceedings were completed. Pet. App. 82a. The police had no ulterior motive for disposing of the boots.

Following the dismissal of the criminal proceedings, Petitioner, on or about July 28, 1994, commenced a civil suit in the Wayne County Circuit Court by the filing of a Complaint against various Defendants including Respondents K-Mart Corporation and Jill Fehrenbach. Also named as Defendants in the State action were Van Buren Township and the individual Defendants who were the purported agents or employees of K-Mart and Van Buren Township Police Department.

On October 21, 1994, the Wayne County Circuit Court entered an Order quashing service of process in favor of all Defendants, except Van Buren Township. Petitioner subsequently effectively served Defendants K-Mart Corporation and Jill Fehrenbach with his Complaint.

Defendant Van Buren Township then removed this matter to the U.S. District Court for the Eastern District of Michigan. However, in an Order dated January 30, 1995, the Federal District Court remanded this matter to Wayne County Circuit Court on the basis that Van Buren Township's removal petition was not filed in a timely manner.

Following the remand to Wayne County Circuit Court, Defendants K-Mart and Jill Fehrenbach filed a Motion for More Definite Statement on the basis that Petitioner's original Complaint was filed in a vague and cursory fashion, making it impossible for Defendants to file a responsive pleading without forcing them to guess as to the nature of the various claims asserted by Petitioner and which claims were being asserted against which particular Defendant.

In an Order dated February 16, 1995, the Wayne County Circuit Court granted Defendants' Motion for a More Definite Statement, requiring Petitioner to:

1. Identify the parties and state the county of residents.

2. Provide separate paragraphs for each cause of action.

3. Identify what actions were taken by the individual parties which support Petitioner's cause of action as against each particular Defendant.

4. Identify the statutes relied upon by Petitioner to support his claim for relief.

Following the filing of Petitioner's Amended Complaint, Defendants K-Mart and Jill Fehrenbach filed a Motion for Summary Disposition seeking a dismissal of

each count of Petitioner's four-count Complaint, i.e.: Count I – defamation; Count II – malicious prosecution; Count III – violation of the Michigan Consumer Protection Act; and Count IV – violation of civil rights. Defendants sought a dismissal of each cause of action on the basis that Petitioner failed to state a claim upon which relief could be granted. *See* MCR 2.116(C)(8).

Defendant Van Buren Township also filed a Motion for Summary Disposition alleging, in part, that Petitioner's claim against this Defendant was barred by governmental immunity. In an Order dated July 21, 1995, the trial court granted Van Buren Township's Motion for Summary Disposition. In an Order dated July 24, 1995, the trial court granted summary disposition in favor of Defendants K-Mart and Jill Fehrenbach with regard to Petitioner's claims for defamation, violation of the Michigan Consumer Protection Act and violation of civil rights. The trial court denied Defendants' Motion for Summary Disposition with regard to Petitioner's claim for malicious prosecution ruling that his Complaint sufficiently stated a claim upon which relief can be granted.

Defendants Jill Fehrenbach and K-Mart Corporation subsequently filed a Motion for Summary Disposition with regard to Petitioner's remaining claim for malicious prosecution. As to this remaining cause of action, Defendants asserted the lack of genuine issue of material fact mandating a dismissal as a matter of law. *See* MCR 2.116(C)(10).

In an Opinion and Order dated October 20, 1995, the trial court granted summary disposition as to the remaining count for malicious prosecution on the basis that

Petitioner failed to set forth facts establishing each of the four requisite elements for a claim for malicious prosecution. Pet. App. 6a, 17a. Petitioner then filed a Claim of Appeal to the Michigan Court of Appeals from the trial court's order dismissing this remaining count and subsequent order denying Petitioner's Motion for Reconsideration.[2]

In an Opinion dated July 8, 1997, the Michigan Court of Appeals affirmed the trial court's grant of summary disposition in favor of Defendants because of the lack of any genuine issue of fact as to Petitioner's inability to present evidence establishing each of the four necessary criteria for maintaining a cause of action for malicious prosecution. *See, Wilson v. Yono,* 65 Mich. App. 441, 237 N.W.2d 494 (1975). In addition to Petitioner's inability to establish the second criteria for maintaining this cause of action, "termination of the [underlying criminal] proceeding in favor of the accused," the Court of Appeals held that the facts are undisputed regarding Petitioner's inability to establish the "absence of probable cause" criteria. Pet. App. 3a-4a. Specifically, the Court of Appeals ruled:

> Nonetheless, notwithstanding reversal on appeal, which was not for fraud or perjury on

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[2] Petitioner did not appeal from the trial court's previous order dismissing Petitioner's claim for defamation, violation of the Michigan Consumer Protection Act and violation of civil rights. Nor did Petitioner appeal from the order dismissing Van Buren Township on the basis of governmental immunity. As such, Petitioner waived on appeal any objection to the propriety of the above-stated dismissal orders. *See, e.g., Royal Indemnity Co. v. H.S. Watson Co.,* 93 Mich. App. 491, 287 N.W.2d 278 (1979).

> behalf of these appellees, the very fact of conviction conclusively establishes probable cause and thereby precludes a suit for malicious prosecution. *Nawrocki v. Eberhard Foods, Inc,* 24 Mich App 646, 650-651; 180 NW2d 849 (1970).

Petitioner then filed a Motion for Rehearing. In an Order dated September 30, 1997, the Court of Appeals denied Petitioner's Motion. Pet. App. 20a. Petitioner then filed a Delayed Application for Leave to Appeal to the Michigan Supreme Court which was denied in an Order dated July 28, 1998. Pet. App. 1a-2a. Petitioner's Motion for Reconsideration was also denied by way of Order dated September 28, 1998. Pet. App. 21a-22a.

REASONS FOR DENYING THE PETITION

Petitioner now brings his Writ of Certiorari asserting that the legal standard by which the Michigan Court of Appeals affirmed the dismissal of his malicious prosecution claim somehow violated his constitutional rights to due process and equal protection under the Fourteenth Amendment. However, upon closer review of Petitioner's Writ, it is apparent that his purported "federal question" is in reality a thinly veiled attempt to have this Court review a State Appellate Court decision on the basis that the State Court applied or enacted an incorrect legal standard in dismissing Petitioner's state cause of action. Whether or not the Michigan Court of Appeals applied the correct legal standard in dismissing Petitioner's state claim for malicious prosecution is *not*, by definition, a federal question and, therefore, is not an issue appropriate for this Court.

As will be discussed more fully below, there exists additional grounds for the denial of Petitioner's Writ of Certiorari. First, Petitioner's alleged "federal question" was never raised in the State Courts and is therefore not properly presented to this Court. Second, even if it can be argued that the Michigan Courts applied the wrong legal standard in dismissing Petitioner's malicious prosecution claim, the manner in which the state cause of action was dismissed by the trial court, by way of summary disposition, and affirmed on appeal did not violate Petitioner's rights to due process or equal protection.

There can be no dispute that at all levels of the proceedings below, i.e., proceedings before the trial court, Michigan Court of Appeals and Michigan Supreme Court, Petitioner was provided with notice of the proceedings and that the subject matter of these proceedings was the legal viability of his remaining state cause of action. Additionally, at each level, Petitioner was fully provided with the opportunity to defend against the dismissal of his remaining cause of action. Thus, at no point during any of the proceedings below were Petitioner's due process rights ever violated.

Petitioner's equal protection argument is, again, simply based upon his assertion that the Michigan appellate courts misapplied state law in dismissing his malicious prosecution claim. As will be noted below, misapplication of state law cannot be the basis for an assertion of an equal protection violation.

For these reasons, as more fully explained below, the Petition for a Writ of Certiorari must be denied.

I. PETITIONER HAS NOT ESTABLISHED A JURISDICTIONAL BASIS FOR THIS COURT TO CONSIDER HIS WRIT OF CERTIORARI GIVEN THAT THE PURPORTED CONSTITUTIONAL ISSUES RAISED IN PETITIONER'S WRIT WERE NEVER PRESENTED TO THE STATE COURT.

In his Writ of Certiorari, Petitioner asserts that his "federal question" occurred or was created as a consequence of the Michigan Court of Appeals' decision creating a new and more stringent requirement for the maintenance of a state cause of action for malicious prosecution, particularly as it relates to the element that there exists no probable cause for the accusation against the Petitioner. Petitioner interprets the Michigan Court of Appeals' ruling as providing that a reversal of the criminal conviction will not overcome the existence of probable cause unless the conviction was reversed on the basis of fraud or perjury. *See* Petitioner's Writ at 14-15.

Whether or not the Michigan Court of Appeals employed the correct legal standard in affirming the dismissal of Petitioner's malicious prosecution claim, the fact remains that this is not a "federal question" but simply a dispute concerning the correct interpretation and application of the state law governing the maintenance of a state claim for malicious prosecution. However, in an attempt to convert this issue into a "federal question," Petitioner argues that the Michigan Court of Appeals' decision created a federal question because the effect of the decision was to create a "conclusive presumption preventing him from access to the courts, denying him due process of law, and denying him the right

other tort victims have, to sue for damages." Petitioner's Writ at 16.

The statutory basis for Petitioner's assertion as to the existence of a federal question is 28 U.S.C. § 1257(a) which provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

A review of the decisions from this Court interpreting section 1257 reveals that in order for a federal question to be properly presented to this Court, the question must be first be raised in the State Court proceedings. As stated in *Adams v. Robertson*, ___ U.S. ___, 117 S.Ct. 1028 (1997):

> With "very rare exceptions," *Yee v. Escondido*, 503 U.S. 519, 533, 112 S.Ct. 1522, 1531, 118 L.Ed.2d 153 (1992), we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review. 117 S.Ct. at 1029.

The Court in *Adams* further held that:

> When the highest State court is silent on a federal question before us, we assume that the issue is not properly presented. . . . *Id.*

In *Street v. New York*, 194 U.S. 576 (1969), this Court held that when an issue is presented to this Court, by Writ of Certiorari, which was not presented to the State Court in such a manner that it was necessarily decided by the highest State Court, this Court has "no power to consider it." *Id.* at 581-582. In *Monks v. New Jersey*, 398 U.S. 71 (1970), the Court held that the petitioner could not raise, for the first time on writ of certiorari, his assertion as to the alleged unconstitutional application of a state statute pertaining to the disposition of juvenile defenders, as the state courts were never presented with the opportunity to pass upon this issue.

In the case herein, it is obvious that the manner by which the Michigan Court of Appeals affirmed the Wayne County Circuit Court's dismissal of Petitioner's malicious prosecution claim does not constitute a federal question involving a purported constitutional violation. However, even to assume that the Michigan Court of Appeals' ruling somehow rises to the level of a "federal question," this issue would only be properly before this Court had Petitioner raised these constitutional arguments in his Application for Leave to Appeal to the Michigan Supreme Court. Needless to say, Petitioner's Application to the Michigan Supreme Court is void of any argument that the effect of the Michigan Court of Appeals' decision was to violate his due process rights and/or equal protection rights. Thus, in addition to the fact that the issue now before this Court is not, in reality, a "federal question," the fact that this purported federal question was never raised before the Michigan Supreme Court offers a conclusive basis for this Court to reject Petitioner's Writ of Certiorari.

II. THE MANNER IN WHICH THE STATE COURT DISMISSED, BY WAY OF SUMMARY DISPOSITION, PETITIONER'S CLAIM FOR MALICIOUS PROSECUTION DID NOT VIOLATE EQUAL PROTECTION AS THE STATE COURT DID NOT MISAPPLY STATE LAW IN DISMISSING PETITIONER'S CAUSE OF ACTION AND, ADDITIONALLY, NO VIOLATION OF EQUAL PROTECTION WOULD EXIST EVEN IF A MISAPPLICATION OF STATE LAW DID OCCUR.

In support of his violation of equal protection argument, Petitioner asserts that the effect of the Court of Appeals' ruling was to create a bar to the filing of a civil suit for malicious prosecution, specifically as to those claimants whose underlying criminal conviction was procured through fraud or perjured testimony. Petitioner's Writ at 24. However, as stated below, what Petitioner attempts to "pass off" as a federal question/constitutional issue is in reality a dispute as to the applicable State law governing the maintenance of a malicious prosecution claim.

There is no dispute that the function of the Equal Protection Clause is to measure the validity of classifications created by State law. *Parham v. Hughes*, 441 U.S. 347, 358 (1979). However, as stated by this Court in *Beck v. Washington*, 369 U.S. 541 (1962), the Equal Protection Clause does not require uniformity of judicial decision. Thus, misapplication of State law is not invidious discrimination in violation of equal protection. *See also, Moyer v. State of Delaware*, 452 A.2d 948, 950 (Del. Supr. 1982).

Similarly, in the case at bar, Petitioner's assertion as to the misapplication by the Michigan Court of Appeals

of the law governing the maintenance of a cause of action for malicious prosecution does not rise to the level of any violation of equal protection.

In support of his equal protection argument, Petitioner, in his Writ of Certiorari cites this Court's decision in *Lindsey v. Normat*, 405 U.S. 56 (1972) and *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). In *Lindsey*, this Court held that the Equal Protection Clause was violated by state law which required a double-bond from a tenant wishing to appeal from an adverse landlord-tenant decision. In no other type of appeal was there a requirement for a double-bond from the appealing party. In *M.L.B.*, this Court held ~~that the State~~ violated equal protection barring an appeal by an indigent whose parental rights were terminated because of the appealing party's failure to pay the fees for a hearing transcript. The situations in both *Lindsey* and *M.L.B.* are certainly distinguishable from the situation at bar. *Lindsey* and *M.L.B.* involve procedural rules centering around the filing of an appeal which were imposed against only one classification of individuals. In the case herein, Petitioner has not and cannot cite to any procedural rule imposed by the Michigan Courts which are specifically imposed upon malicious prosecution claimants and which bar their ability to appeal from an adverse ruling by the circuit courts. The absence of any allegation as to a procedural impediment to Petitioner's ability to appeal from the circuit court's dismissal Order offers further proof as to the absence of any equal protection violation with regard to the manner in which the Michigan Appellate Courts affirmed the Wayne County Circuit Court dismissal order.

III. THE STATE COURT'S DISMISSAL OF PETITIONER'S MALICIOUS PROSECUTION CLAIM BY WAY OF SUMMARY DISPOSITION DID NOT VIOLATE DUE PROCESS AS PLAINTIFF WAS PROVIDED WITH NOTICE AND AN OPPORTUNITY TO DEFEND THE SUMMARY DISPOSITION MOTION AND THERE WERE NO IMPEDIMENTS ON PETITIONER'S ABILITY TO APPEAL THE CIRCUIT COURT'S DISMISSAL ORDER.

Petitioner's assertion that the Michigan Courts improperly deprived Petitioner of his right to have his tort claim heard at trial is totally without merit. There is absolutely no dispute Petitioner was provided notice of the proceedings relative to the Respondents' Motion for Summary Disposition, filed in the Wayne County Circuit Court, and was afforded ample opportunity to contest Respondents' request for a dismissal of his cause of action. Additionally, there is no dispute as to the absence of any impediment imposed upon Petitioner with respect to his ability to seek appellate review, from both the Michigan Court of Appeals and Michigan Supreme Court, of the circuit court's dismissal order.

As set forth by this Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the essence of due process is the requirement that a person in "jeopardy of serious loss" be given notice of a case against him and the opportunity to defend. Thus, the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Id.* at 334, quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

This Court in *Mathews* further held that:

> [D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, places and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* at 334 (Citations Omitted).

In *Zimmerman v. Burch*, 494 U.S. 113, 125 (1990), this Court held:

> The basic purport of the constitutional requirement [of due process] is that, before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard "at a meaningful time and in a meaningful manner."

Therefore, procedural due process guarantees an affected individual the right to some form of hearing, with notice and an opportunity to be heard, before he or she is divested of a protected interest. *Cotnoir v. University of Maine Systems*, 353 F.3d 6, 10 (1st Cir. 1994).

In the case herein, Petitioner was provided with constitutional guarantees, the opportunity to be heard "at a meaningful time and in a meaningful manner," at all phases of the State Court proceedings. The fact that Petitioner initiated the appellate proceedings, and the absence of any impediments imposed upon Petitioner's ability to file his appeals conclusively establishes the absence of any due process violation with regard to either the circuit court's dismissal order or the appellate courts' affirmance.

Petitioner's implication that the manner in which his malicious prosecution claim was dismissed, i.e., by way of summary disposition affirmed by the appellate courts, somehow violates a due process right to trial, is totally void of merit. As noted by this Court in *Logan v. Zimmerman Brush Co.*, 459 U.S. 422 (1982) (a case cited in Petitioner's Writ of Certiorari), while a State cannot arbitrarily deprive a citizen of a hearing on a tort claim:

> The state may erect reasonable procedural requirements for triggering the right to an adjudication be they statutes or limitations . . . or, in an appropriate case, filing fees. . . . And the state certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. . . . *Id.* at 437-438.

A "reasonable procedural requirement for triggering the right to an adjudication" certainly also includes dismissal by way of summary disposition either because of the lack of any genuine issue of material fact or failure to state a claim upon which relief can be granted. *See* MCR 2.116(C)(8), (10). It is on the basis of this "reasonable procedural requirement" that the circuit court properly dismissed Petitioner's claim for malicious prosecution and the appellate courts properly affirmed.

CONCLUSION

In this case, no federal question exists, and even if a federal question did exist, it was never properly presented to the State Appellate Courts. For these reasons, Petitioner's Writ of Certiorari must be denied.

Respectfully submitted,

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